

# Exhibit A

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA, New York, N.Y.

4 v. 15 CR 377(AJN)

5 STEVEN RAWLINS,  
6 Defendant.

7 -----x

8  
9 June 2, 2016  
2:58 p.m.

10 Before:

11 HON. ALISON J. NATHAN,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA  
16 United States Attorney for the  
Southern District of New York  
17 BY: ANDREW DeFILIPPIS  
Assistant United States Attorney

18 SULLIVAN & BRILL  
19 Attorney for Defendant  
BY: STEVEN BRILL

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(In open court)

MR. DEFILIPPIS: Good afternoon, your Honor. Andrew DeFilippis for the government. With me at counsel table is FBI Special Agent Christopher Delzotto, as well as paralegals Mary Diaz and Holly Meisner from our office.

THE COURT: Good afternoon to all of you.

MR. BRILL: Good afternoon. Sullivan & Brill by Steven Brill for Mr. Rawlins.

How are you, your Honor?

THE COURT: Good afternoon, Mr. Brill.

Good afternoon, Mr. Rawlins.

I thank everyone for their patience. I apologize for the delayed start.

We're here today for sentencing in United States vs. Steven Rawlins, 15 CR 377. In preparation for today's proceeding I have reviewed the probation report, which is dated February 5, 2016. I have received and reviewed the following additional submissions: I have objections to the presentence report from Mr. Brill on Mr. Rawlins' behalf dated May 10, 2016. I have the sentencing submission on behalf of Mr. Rawlins which is dated ECF-filed on May 26th, 2016. Attached to the written submission are a series of letters from friends and primarily family of Mr. Rawlins.

I did receive today an additional letter dated -- or it might have come in yesterday, ECF-filed June 1, 2016, and

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1 dated on the letter May 26, 2016 from another friend, close  
2 friend of Mr. Rawlins.

3 In addition to those materials from the defendant, I  
4 received the government's sentencing submission, which was  
5 ECF-filed on May 31st, 2016. I also received -- and, again,  
6 these came in yesterday; they're dated June 1, 2016 -- two  
7 victim impact statements. And I received -- I got it today, it  
8 may have come in yesterday -- a proposed preliminary order of  
9 forfeiture as to specific properties and money judgment  
10 submitted by the government.

11 Counsel, is there anything else I should have in front  
12 of me for purposes of sentencing?

13 MR. DEFILIPPIS: Not from the government, your Honor.

14 MR. BRILL: Nor from the defense.

15 THE COURT: And can you confirm that you've each  
16 received the other's submissions?

17 MR. DEFILIPPIS: Yes, your Honor.

18 MR. BRILL: Yes, confirming.

19 THE COURT: And I should say I also presided over the  
20 trial. And the government's submission relies heavily on trial  
21 transcript excerpts, as well as evidence received during trial.  
22 And I have refreshed my memory with respect to the testimony  
23 from trial in preparation for today's proceeding.

24 Turning to the presentence report, Mr. Brill, I  
25 obviously know that you have it. For the record, have you

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1 reviewed the presentence report and discussed it with your  
2 client?

3 MR. BRILL: Yes.

4 THE COURT: And, Mr. Rawlins, I'm going to make sure  
5 you have an opportunity to review the presentence report and  
6 discuss it with Mr. Brill.

7 THE DEFENDANT: Yes.

8 THE COURT: And point out to him any errors that you  
9 felt existed in the report. You had an opportunity for that?

10 THE DEFENDANT: Yes.

11 THE COURT: And, Mr. DeFilippis, can you confirm for  
12 the record, as I know that you did, but that you, too, reviewed  
13 the presentence report?

14 MR. DEFILIPPIS: I did, your Honor.

15 THE COURT: Let me ask the government first if there  
16 are any objections to the -- putting aside the calculation of  
17 the guidelines for a moment, any objections to the report  
18 regarding factual accuracy?

19 MR. DEFILIPPIS: We have no objections, your Honor.

20 The only factual issue, I guess, that arose is that  
21 the victim impact letters and the analysis done by the  
22 companies as to their losses does differ from the losses that  
23 the government asserts were proven at trial. We have been  
24 informed by the companies that they would like -- if your Honor  
25 is not prepared to rule on the letters and the attachments,

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1 they would like the opportunity to achieve what they believe is  
2 the correct restitution number for restitution purposes. But  
3 the government's view of the guidelines is not changed by that.  
4 And we would rest on our submission for that.

5 THE COURT: All right. So I guess the question is --  
6 and I have not -- since those came in yesterday, I have not  
7 been able to thoroughly incorporate them into my conclusions or  
8 really try to figure out what the discrepancies are.

9 I do think -- and I think this is your point -- for  
10 purposes of the guideline calculation, given the range of  
11 numbers involved in loss amount, I can come to that conclusion,  
12 even noting the discrepancy, and then could take additional  
13 briefing or further proceeding with respect to restitution.

14 MR. DEFILIPPIS: I think that's the government's view  
15 as well, your Honor.

16 THE COURT: Mr. Brill, any concerns with that?

17 MR. BRILL: No. I, too, just received that letter,  
18 those letters, and then was informed actually today that there  
19 is a desire on behalf of the company to seek that restitution  
20 amount, which, again, is different from the loss amount for  
21 guidelines purposes. But I have no objection to exploring  
22 that, exploring the loss amount, as has already been briefed,  
23 and then dealing with the restitution issue subsequent to that.

24 THE COURT: What about forfeiture?

25 MR. DEFILIPPIS: Your Honor, we submitted to your

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1 Honor and to defense counsel as well the proposed order. That  
2 number in the forfeiture order is based on the trial-proven  
3 loss amounts, which is what the government is seeking. And  
4 then it includes several specific property items, jewelry. But  
5 the forfeiture amount there, the government is seeking the  
6 losses that were proven at trial or, in our view, were proven  
7 at trial.

8 THE COURT: Mr. Brill, I guess the question is just  
9 whether there's any desire to take up forfeiture after today,  
10 in conjunction with the restitution determination, or whether,  
11 as with the guideline calculation, it makes sense to proceed to  
12 address forfeiture today as well. I'm open to suggestions. I  
13 don't know when you received the proposed order of restitution  
14 today.

15 MR. BRILL: Today. Well, you mean forfeiture, your  
16 Honor?

17 THE COURT: Sorry. Yes.

18 MR. BRILL: Yes, today.

19 THE COURT: Mr. DeFilippis, do you have a view as to  
20 whether it need be taken up today?

21 MR. DEFILIPPIS: Your Honor, in our view I think --  
22 and it may depend on your Honor's view of our assertions in the  
23 memorandum about the loss amounts. In our view I think it  
24 would be fine to impose forfeiture, and then because  
25 restitution has to be done just within 90 days, to impose

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1 forfeiture in a sentence and then address just the restitution  
2 issues later. I think that would be fine with the government.

3 THE COURT: Let's see where we get to at the end of  
4 the proceeding, or as we pick up following the loss amount  
5 discussion.

6 With respect to the objections to the presentence  
7 report, Mr. Brill, I think what we need to do is to go through  
8 each of these. And you tell me if there's a continuing  
9 objection, and I'll make a ruling. Some of them have impact, I  
10 think, on the discussion of loss amount. It's certainly -- and  
11 some don't. So --

12 MR. BRILL: I agree. A lot of it is -- I mean, the  
13 objections that impact the guidelines were elucidated in the  
14 sentencing submission. But the objections also include just  
15 additional comments that provide further background to some of  
16 the findings that were made by probation, which are outside of  
17 the guideline calculation.

18 THE COURT: Right.

19 Mr. DeFilippis, let me ask you this: So obviously  
20 contested are three aspects of the guideline calculation. With  
21 respect to objections to the presentence report that don't  
22 impact those conclusions, does the government have any  
23 objection to me adopting the recitations in the objections?

24 MR. DEFILIPPIS: No, your Honor, no objections.

25 THE COURT: So maybe, Mr. Brill, if you could just --

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1 if everyone could help me identify, therefore, which of these  
2 objections are going to be adopted and which remain in issue.

3 MR. BRILL: Okay. Well, I'll refer to the letter of  
4 May 10th, which included those objections. I mean, your Honor  
5 doesn't want me to read -- does your Honor want me to read the  
6 objections for the record?

7 THE COURT: No. No. It's part of the record.

8 MR. BRILL: Okay.

9 THE COURT: And I think many of them I can just adopt  
10 as -- just give you an example. I mean, picking one example,  
11 on page five, page 13, paragraph 56, objection to the term  
12 domestic violence, and then explanation for the dispute that  
13 led to that arrest.

14 MR. BRILL: Right.

15 THE COURT: I have no difficulty accepting that  
16 description and having it incorporated into the PSR.

17 MR. BRILL: Right.

18 THE COURT: Also, page five, adding language that  
19 Mr. Rawlins' parents are ill and elderly, they depend on him  
20 for numerous day-to-day items. I have no problem.

21 So I think the question is, if we could identify which  
22 objections are extraneous to the three issues in context with  
23 respect to the guideline calculation.

24 MR. BRILL: Yes. Well, I mean, perhaps -- I'll do  
25 that. And then if the Court feels that --

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1 THE COURT: I'm going to change course, Mr. Brill.  
2 Let's get to the discussion. I'll state my conclusions, and  
3 based on argument and the evidentiary record, and then I think  
4 that will make dealing with any outstanding objections easy to  
5 incorporate.

6 MR. BRILL: Okay.

7 THE COURT: So I'll set aside -- maybe I'll state it  
8 this way for the record, and you tell me if there's any  
9 concerns with this.

10 Setting aside the objections that are raised here that  
11 go to the defense's arguments as to the appropriate guideline  
12 calculation, for the moment, I do otherwise accept those  
13 objections and incorporate them by reference into the PSR.

14 MR. BRILL: Thank you.

15 THE COURT: Any concerns with that?

16 MR. DEFILIPPIS: I don't think so, your Honor.

17 THE COURT: Okay. So with that caveat noted and  
18 obviously otherwise, as we'll take up in our discussion of the  
19 appropriate guideline calculation, I otherwise do accept the  
20 factual recitations set forth in the PSR. The PSR will be made  
21 a part of the record in this matter and placed under seal. If  
22 an appeal is taken, counsel on appeal may have access to the  
23 sealed report without further application to this Court.

24 So with the caveat that we're setting aside for the  
25 moment the facts that go to the guideline calculation and that

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1 I've otherwise accepted the May 10, 2016, objections to the  
2 presentence report, I am otherwise adopting the factual  
3 recitations set forth in the PSR. Okay.

4 So we'll turn to the guideline calculation. I begin  
5 by noting I'm no longer required to follow the United States  
6 Sentencing Guidelines but I am still required to consider the  
7 applicable guidelines in imposing sentence, and must,  
8 therefore, accurately calculate the sentencing guideline range.  
9 As I understand the papers and have previewed, I understand  
10 there will be three factual issues in dispute that go to the  
11 appropriate guideline calculation: The loss amount, the  
12 enhancement for sophisticated means, and the obstruction of  
13 justice enhancement.

14 Who would like to address these first?  
15 Mr. DeFilippis?

16 MR. DEFILIPPIS: Yes, your Honor.

17 First, as to the loss amount, I think, as is laid out  
18 in our brief in some specificity, we have certainly beyond a  
19 preponderance, and we submit beyond a reasonable doubt, given  
20 that we had a trial here, proven that the loss amount  
21 significantly exceeded \$9.5 million.

22 The first piece of that loss amount is based on the  
23 analysis done first by the companies prior to trial, and then  
24 further refined by the FBI, which is the approximately  
25 \$8 million in losses to Prime Health and Core Choice, the vast

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1 majority of that in this analysis being allocated to Prime  
2 Health. It was 294,000 approximately that the FBI determined,  
3 based on one year of analysis, was suffered at Core Choice.  
4 The company now has done additional work, but for these  
5 purposes that \$8 million -- the testimony at trial established  
6 the methodology that was used to come up with that \$8 million.

7 THE COURT: And that's in the 2011-to-2013 time  
8 period?

9 MR. DEFILIPPIS: Exactly, your Honor. It did not  
10 include the 2009 and 2010 period.

11 So you heard at trial a detailed testimony about the  
12 methodology for arriving at that number. It first included a  
13 compiling and vetting process by the company. @Scott center,  
14 who you heard from on the stand, was the controller. And he  
15 described how they assembled the transactions initiated by  
16 Mr. Rawlins, how they tried to determine which were for  
17 authorized versus unauthorized purposes. They sought  
18 documentation for transactions that they suspected were  
19 unauthorized, both within the company and ultimately from  
20 Mr. Rawlins, with no success, and compiled spreadsheets that  
21 were, in Mr. @Center's words, weeded out for transactions  
22 determined to be legitimate.

23 After that process these records were turned over to  
24 the FBI. The FBI conducted further analysis with the benefit  
25 of bank and credit card records that had been obtained pursuant

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1 to grand jury subpoena. And so we looked further as to what  
2 the purpose for these transactions were. Again, they removed  
3 transactions when they learned that they had legitimate  
4 authorized purposes. And that number there is the final result  
5 of the work of Agent Delzotto and the FBI. So we would submit  
6 that we have proven certainly well beyond a preponderance that  
7 those funds were misappropriated by Mr. Rawlins.

8 As to the earlier years, 2009 and 2010, that is where  
9 Agent Delzotto did a less formal, less  
10 transaction-by-transaction based analysis. But he looked at  
11 ledgers and records of the company that was Prime Health to see  
12 what -- were there similar patterns of funds transfers  
13 initiated by Mr. Rawlins? Were they going to entities that had  
14 been used to receive or -- fraudulent transactions in the later  
15 years? And based on that analysis, Agent Delzotto estimated  
16 that approximately 2 million to 3 million dollars in funds were  
17 misappropriated by Mr. Rawlins during those years. We're  
18 asking conservatively that your Honor estimate about 2 million  
19 to be conservative. But, again, Agent Delzotto's best estimate  
20 based on the records he looked at was 2 to 3 million.

21 So those are the core losses proved at trial with  
22 regard to the two main victim companies. Beyond that, there  
23 was the 1.3 million in intended loss to Janet Godard. The  
24 guidelines include both intended loss and actual loss. And  
25 your Honor will recall that Ms. Godard was the owner of

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1 Aerofund, which was a factoring company. And the essence of  
2 Mr. Rawlins' behavior towards Ms. Godard was that he asked her  
3 for a \$1.3 million cash advance based on a falsified contract  
4 reflecting receivables that he was owed of over \$8 million from  
5 Philip Morris. So in other words, he used this falsified  
6 contract in order to -- intended to obtain \$1.3 million.  
7 Ms. Godard thought something didn't smell right about this  
8 deal. She did not turn over that money. So it's intended, as  
9 opposed to an actual loss, but under the guidelines should be  
10 included.

11 Then there's 1.5 million of intended loss to  
12 Dr. Steven Gass. This emerged, your Honor, in the context of a  
13 debt that Mr. Rawlins had to Bank of America. He attempted --  
14 or he defrauded Sal Aurora, obtaining \$1.3 million from  
15 Mr. Aurora by, again, presenting these fraudulent Philip Morris  
16 contracts. After receiving that money from Mr. Aurora and  
17 giving it to Bank of America, he then solicited Dr. Gass over  
18 e-mail for 1.5 million. It was not provided, but, again, that  
19 is intended loss.

20 And finally, your Honor --

21 THE COURT: Just on that, you dropped a footnote on  
22 the appropriateness of inclusion of the 1.3 million in light of  
23 the fact that the bankruptcy trustee ultimately did return the  
24 funds to Aurora, right?

25 MR. DEFILIPPIS: Yes, most of the funds. Yes. And

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1 our view there, your Honor, is that absolutely that -- given  
2 the testimony, Mr. Aurora said that he was paid back a year and  
3 a half after the loan was made. The loan was made in August of  
4 2012. So that brings us to, say, January/February of '14.  
5 That was significantly after the fraud was detected. And if  
6 someone is paid back after the fraud is detected, then, in  
7 fact, it does count towards the loss amount, regardless of  
8 whether they were paid back.

9 So we do believe that it can properly be included in  
10 the loss amount, and certainly would ask your Honor to do that,  
11 if your analysis otherwise puts the number under 9.5 million.  
12 But, again, the other losses that we've enumerated we think get  
13 us well over 9.5.

14 THE COURT: But that calculation does include the  
15 1.5 million related to the same --

16 MR. DEFILIPPIS: Yes.

17 THE COURT: -- repayment of the Bank of America loan?

18 MR. DEFILIPPIS: It does.

19 THE COURT: As with respect to Dr. Gass?

20 MR. DEFILIPPIS: Yes. And so those are the first I  
21 guess four categories of losses.

22 The final one, your Honor, is the \$67,000 in actual  
23 losses to Shane Gaddes, the founder of Westcrete, Incorporated.  
24 That was the construction start-up company. And he testified  
25 that Mr. Rawlins obtained \$67,000 from him over the course of

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1 time, promising to get financing for the company. He was  
2 never -- obtained financing, never repaid the money, never  
3 provided documentation to give evidence of any fees, which was  
4 the purported reason he needed that money. So that \$67,000 is  
5 actual loss to Mr. Gaddes.

6 And so adding all of that up, even if we exclude the  
7 Sal Aurora money, the 1.3 million from the bankruptcy trustee,  
8 it still comes to about 12.9 million, your Honor. So that's  
9 the loss issue.

10 I'm happy to proceed to --

11 THE COURT: Well, I'll hear from Mr. Brill.

12 MR. BRILL: So --

13 THE COURT: And just to start, I did have you confirm  
14 by letter that you wish to make arguments based on the existing  
15 record and have considered, but declined to seek, an  
16 evidentiary hearing?

17 MR. BRILL: That's correct, your Honor. Yes.

18 So I think just a couple things, just to start off,  
19 that I think deserve to be mentioned. First, as I've  
20 reiterated in my submission, Mr. Rawlins denies, essentially  
21 denies the loss entirely. His claim, as it was at trial, was  
22 that any moneys that essentially came from Prime Health or Core  
23 Choice in the fashion that it came, whether it be wires, checks  
24 or made payable to American Express cards to cover Mr. Rawlins'  
25 personal expenses, were permitted and authorized by Mr. Sharp

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1 and others within the company and known by them.

2 So I think that just for the sake of this particular  
3 argument, that we're assuming that your Honor has essentially  
4 accepted this particular loss amount as fact, but that I do  
5 want to again reiterate that there's a denial that Mr. Rawlins  
6 essentially was unauthorized in receiving this particular  
7 money.

8 But given the verdict, obviously, the loss is  
9 something that needs to be addressed. Mr. DeFilippis mentioned  
10 proven beyond a reasonable doubt as a result of trial. I think  
11 it deserves as clarification that the jury didn't find  
12 particular loss amount in this particular case. They did  
13 obviously convict Mr. Rawlins of wire fraud, but there is no  
14 finding by the jury beyond a reasonable doubt that they found a  
15 particular loss amount as to what Mr. Rawlins was responsible  
16 for.

17 So essentially we object to various aspects of the  
18 government's calculation when it comes to loss. You know, I  
19 think that, assuming that the Court is satisfied that between  
20 Mr. Center and Agent Delzotto at trial, that they have  
21 established through formal process roughly \$8 million in loss  
22 between Prime Health and Core Choice, we object to any finding  
23 by this Court above that particular amount for the following  
24 reasons: First is that by the government's own admission, the  
25 additional 2 to 3 million dollars -- and as Mr. DeFilippis

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1 says, conservatively \$2 million -- was essentially derived by  
2 Agent Delzotto in a less formal, less  
3 transaction-by-transaction basis. And I think, based on that  
4 record, and based on the fact that it differs from the record  
5 before you with respect to the 8-plus million dollars that was  
6 established between Mr. Center and Agent Delzotto on the stand,  
7 that I don't believe that that rises to the level of  
8 preponderance.

9 And I think the Court or the government had the burden  
10 to present to this Court similar evidence, as it did with  
11 respect to the \$8 million, as it should have done with respect  
12 to the 2 to 3 million dollars that it alleges was also part of  
13 Mr. Rawlins' scheme during the years of 2009 to 2010. It is  
14 sort of an extrapolation that, because we see a pattern -- and  
15 I'm sort of paraphrasing what the government's argument seems  
16 to be -- because we see a pattern in 2009 and 2010 that moneys  
17 went to similar places controlled by Mr. Rawlins, and in  
18 similar fashion, that therefore we should include that in the  
19 loss amount as it pertains to something as serious as this,  
20 which is a guideline calculation which would control  
21 Mr. Rawlins' guideline I think is inadequate, insufficient and  
22 doesn't rise to that level that the Court should -- the Court  
23 deserves in order to find by a preponderance of the evidence  
24 that the loss calculation should include that particular  
25 number.

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1           THE COURT: Mr. Brill, do you have any -- I understand  
2 the point, but I wonder if you have any authority for the  
3 proposition that the kind of pattern identifying an illogical  
4 approach that was testified to is insufficient for purposes of  
5 a preponderance determination.

6           MR. BRILL: The answer to that is, no, I don't have a  
7 case that says the Court should be wary of evidence that is  
8 gathered in a less formal process and attempted to be proven,  
9 because it is similar to losses that were indeed proven in a  
10 different way.

11           I think the best that I can offer this Court is the  
12 idea that it is a different analysis, and it is a less  
13 sophisticated analysis. And it is a less formal analysis. And  
14 if there is life in the preponderance of the evidence standard,  
15 then given the difference, you know, our position is that the  
16 way in which they derived the 2 million to 3 million dollars  
17 loss, despite the fact that it matched a pattern with respect  
18 to the other losses, does not overcome that burden.

19           So I think this is more of a perhaps discretionary  
20 decision, obviously, and I don't have particular case law to  
21 say one way or the other, other than the fact that the Court  
22 obviously must find by a preponderance of the evidence that the  
23 government has proven their loss amount.

24           Our additional objection is to the \$1.3 million of  
25 intended loss to Ms. Godard. Obviously it goes without saying

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1 that this is not actual loss but intended, in that --

2 THE COURT: You don't dispute that intended loss may  
3 appropriately be considered?

4 MR. BRILL: No, absolutely not. But what I do dispute  
5 is that despite the fact that your Honor permitted that  
6 evidence at trial for perhaps some relevant basis with respect  
7 to the evidence at trial, we would object to the idea that it  
8 is irrelevant conduct with respect to sentencing, in that we  
9 are assuming that it is all true; that what essentially what  
10 we're dealing is what we would argue -- again, assuming for the  
11 purposes of this discussion -- is an additional fraud that is  
12 an attempt to seek money from Ms. Godard as -- and use a forged  
13 document from Philip Morris in order to do that. And to  
14 intertwine that particular conduct and that particular  
15 intended -- that particular conduct by Mr. Rawlins in his  
16 intention to seek that particular money in his conduct with  
17 respect to stealing from Prime Health and Core Choice, I think,  
18 would be a mistake and be unfair for the purposes of  
19 sentencing; in that if an individual is essentially charged  
20 with committing a fraud, and then in addition to that attempts  
21 to commit another fraud with different parties using different  
22 means and in a different way, then -- you know, which I think  
23 is what went on with respect to Ms. Godard -- then I think that  
24 we're not dealing essentially with relevant conduct to the  
25 instant matter, which is whether or not -- well, the fact that

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1 Mr. Rawlins was convicted of defrauding Prime Health and Core  
2 Choice.

3 So based on relevant conduct standard, we don't  
4 believe that it rises to that level, despite the fact that the  
5 Court may find that a fraud was committed and that intended  
6 loss was something that the Court believes to have occurred.  
7 Whether or not the Court can then use that loss with respect to  
8 Mr. Rawlins' sentence, with respect to the wire fraud  
9 allegations pertaining to Prime Health and Core Choice I think  
10 is another story. And we would object if the Court did that.

11 With respect to the \$1.5 million request from  
12 Mr. Gass, that, I think, was brought out actually by an e-mail.  
13 I think that e-mail was either mentioned in the government's  
14 submission or -- yes, in the government's submission. You  
15 know, it is a -- again, assuming -- well, withdrawn.

16 The idea that Mr. Rawlins sought \$1.5 million from  
17 Mr. Gass with respect to a bankruptcy proceeding with respect  
18 to Bank of America, it is essentially true on its face in that  
19 given the e-mail, Mr. Rawlins essentially sought that  
20 particular money. And I'm not sure -- maybe the government can  
21 clarify if I've gotten this wrong, but that the -- the reason  
22 that Mr. Rawlins sought that money from Mr. Gass was the real  
23 reason that there was indeed an obligation to pay Bank of  
24 America with respect to a bankruptcy proceeding. And indeed,  
25 with that particular e-mail, that's what was told to Mr. Gass.

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1           So unless the government can point to some allegation  
2 this was fraudulent per se and that there was something that  
3 was similar to the aspect of criminal conduct with respect to  
4 other losses, other attempts that Mr. Rawlins made to receive  
5 money, then we would argue that that, too, that 1.5 million  
6 attempt from Mr. Gass, should not be included in the Court's  
7 loss calculation.

8           THE COURT: Let me just make sure I understand. So  
9 the contention there is if you look at the evidence the  
10 government points to with respect to this, there is no fraud  
11 there? He asked for 1.5 million from Gass to repay the Bank of  
12 America loan, and nothing suggests that that wasn't exactly  
13 what he was doing? Is that the --

14           MR. BRILL: That's the argument, your Honor. And  
15 indeed, there was an obligation to pay Bank of America. So,  
16 you know, there is a truth in that particular argument and  
17 that, in fact, there was that obligation to do just that. So I  
18 think if the Court is going to analyze that particular part of  
19 the loss and that conduct, then I think that the Court should,  
20 in light favorable to Mr. Rawlins, should obviously look at  
21 whether or not that intention was indeed what Mr. Rawlins set  
22 it out to be.

23           And again -- well, lastly, we would object to the  
24 \$1.3 million that is a footnote at this point. I know the  
25 government is somewhat -- I mean, I don't want to speak for

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1       them, but somewhat on the fence as to whether or not that  
2       should apply. That shouldn't apply. I know they feel they're  
3       already over the 9.5 million threshold, but assuming that the  
4       Court agrees with our particular arguments, then I think the  
5       fact that Mr. Aurora was paid back by bankruptcy court should  
6       alleviate any notion that Mr. Rawlins should be -- that a  
7       guideline calculation should include that particular money when  
8       this comes to the intended loss, the actual loss at the hands  
9       of Mr. Rawlins. So I think the repayment of that particular  
10      money is important enough that the Court should disregard that  
11      particular money as well.

12               Again, if the Court agrees with our arguments with  
13      respect to the additional, less formal calculation that Agent  
14      Delzotto made, the 1.3 million with respect to Ms. Godard, then  
15      the 1.5 sought from Mr. Gass and 1.3 from Mr. Aurora, then  
16      we're not over the threshold of the 9.5 million loss amount,  
17      but yet at a level below. So instead of adding 20 levels to  
18      Mr. Rawlins' base offense level, the Court, if it agrees with  
19      the defendant, should add only 18.

20               THE COURT: Thank you.

21               Briefly, Mr. DeFilippis, can you address -- I'm going  
22      to work backwards from the questions that were raised. With  
23      respect to the 1.5 million request from -- to Dr. Gass, could  
24      you take on the contention which is all you've pointed to in  
25      the memorandum is Mr. Rawlins asking for what he needed.

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1 MR. DEFILIPPIS: Yes, your Honor. And I think when  
2 taken in isolation, I can see why one might try to argue that  
3 it was not a fraudulent approach or transaction.

4 But I think, taken in the context of the defendant's  
5 behavior here, it absolutely is. First, immediately preceding  
6 this was an effort by Mr. Rawlins that we now know, looking in  
7 hindsight, was a fraud against Mr. Aurora; showed him a Philip  
8 Morris contract that was falsified; obtained \$1.3 million,  
9 which it's now clear he never intended to pay back, probably  
10 knew he could not pay it back; and obtained it on false  
11 pretenses.

12 He then on the same day, he obtains that money that he  
13 knows he will never pay back, goes to Dr. Gass and says, hey, I  
14 need you to fill the rest of my debt to Bank of America. Well,  
15 if he knew he couldn't pay back the first half, he certainly  
16 knew he'd never pay back Dr. Gass. And then at the end of the  
17 e-mail actually represents to him that, if you help me in the  
18 next several hours, you will be rewarded well. Again,  
19 promising even more reward above simply the doing of a favor.

20 And so, your Honor, I think, taken in the context not  
21 only of this transaction but all of the defendant's behavior  
22 over the course of years, this was just one more effort by  
23 Mr. Rawlins to extract money that he had no intention of paying  
24 back, and that he falsely represented to Dr. Gass that he would  
25 not only pay back but reward him well. And so I think it's

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1 that aspect of it that unambiguously makes it fraudulent,  
2 because he's making that false representation which we know in  
3 the context of all his other behavior could not have been true.

4 THE COURT: Just out of curiosity, I don't have the  
5 exhibit in front of me, but the portion you cite doesn't  
6 actually say, I'll pay you back.

7 MR. DEFILIPPIS: You're right, your Honor. I'm just  
8 flipping to the right page here. It says reward you well, or  
9 something like that.

10 THE COURT: You will be rewarded well.

11 MR. DEFILIPPIS: And our contention is when you ask  
12 someone for a loan, it's absolutely implicit that you'll pay it  
13 back. And then we think that was clearly implicit in the  
14 conversation. The additional representation, you'll be  
15 rewarded well, was, I'll do something even more than pay it  
16 back. At least that's how we would read it.

17 THE COURT: Your response, then -- this is moving back  
18 up to the first general -- first point, once we get beyond the  
19 Core Choice and Prime Health approximately 8 million, with  
20 respect -- well, with respect to the other years, the  
21 extrapolation methodology, Mr. Brill has said that it just  
22 is -- particularly when you contrast it with the  
23 transaction-by-transaction approach taken for 2011 to 2013, it  
24 falls short. The government falls short of meeting that  
25 standard.

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1 MR. DEFILIPPIS: Your Honor, we would argue that under  
2 a preponderance standard, it certainly doesn't fall short. It  
3 was not that there was no methodology or no effort made. There  
4 was an effort made on multiple occasions to review records, to  
5 identify patterns. And I wish I had, your Honor, a case that  
6 says it, but I recall in writing the brief that all the Court  
7 has to do is make a reasonable estimate as to loss. And that  
8 can include extrapolation based on numbers of victims and time  
9 periods and things along those lines. The Court is not  
10 required to fastidiously account for each penny of the  
11 estimated loss. It has to make a reasonable effort.

12 So we'd submit that that reliance on Agent Delzotto's  
13 analysis would be reasonable here, particularly when we know  
14 that the fraud spanned over that time period. And I would note  
15 just as a side note to the previous discussion, the reason that  
16 the Sal Aurora money is in a footnote here is not at all  
17 because we're not confident that it could be included or should  
18 be included. Again, it's because we believe these other losses  
19 get us over the figure. The guidelines are unambiguous that if  
20 the loss is repaid after the fraud is detected, that it counts.  
21 And so there's no wiggle room there in the guidelines.

22 Here, the companies actually sent letters to the  
23 defendant in the end of 2013 asking for money back. They  
24 hadn't discovered the full amount of the loss then. So it had  
25 been brought to his attention. The guidelines don't even

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1 require that. All they require is that the defendant  
2 reasonably know that the loss was detected or was soon to be  
3 detected. And we would argue that perhaps even a year before  
4 that the defendant should have known his loss would be detected  
5 in strings of e-mails where he was being questioned about  
6 payments. So sorry to add that footnote but ...

7 THE COURT: Okay. And my last question, and it's a  
8 version of the argument made by Mr. -- there's a general  
9 argument that is reliant on essentially Mr. Rawlins' testimony  
10 about his beliefs as to authorization and the like. So at the  
11 most muscular level he contends none of this should be included  
12 in the loss amount. That's his denial as to liability, as well  
13 as to the specific amount.

14 I suppose there's a less extreme version of that,  
15 which is to say -- and there's some testimony in a culture of  
16 some less than precise bookkeeping, although, yes, a jury  
17 determined him liable and some amount of this, but maybe --  
18 it's difficult to know whether this is a contention or a  
19 version of the contention. It's difficult to know whether to  
20 include all of it, given that there might have been some amount  
21 of authorization implicit.

22 MR. DEFILIPPIS: Your Honor, I think the methodology  
23 that the companies undertook and that the FBI undertook was  
24 designed to address that by looking not only at whether there  
25 was documentation for a particular transaction -- and I think

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1 the fact that -- as my understanding of the trial record, there  
2 was virtually nothing provided by Mr. Rawlins for any of these.  
3 So I think that fact alone speaks volumes that, you know, maybe  
4 if there were documentation for half, you would say he was  
5 sloppy.

6 But virtually nothing, you know, again, as I recall  
7 from the trial, was produced to substantiate any of this.  
8 Combined with the fact that the company also -- there's a  
9 reasonable expectation that if company money is going out the  
10 door, there's going to be some at least understanding after the  
11 fact as to what it was for and what purpose it advanced for the  
12 company. And as to these transactions, there wasn't that.

13 So on both sides there was nothing you would expect of  
14 a legitimate transaction. And so we think both of those kind  
15 of drive towards the same conclusion.

16 THE COURT: Thank you.

17 As to sophistication, Mr. DeFilippis?

18 MR. DEFILIPPIS: Yes, your Honor. So as the case law  
19 suggests on sophistication, while the standard is that the  
20 offense conduct need to be complex or especially intricate,  
21 that does not mean that every aspect of the scheme must be  
22 complex or especially intricate. And, in fact, when you look  
23 at the whole of the scheme, that's what the Court is called to  
24 do, to look at all of the methods that the defendant used, and  
25 in taking them in the aggregate is the scheme complex or

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1 sophisticated? And here we submit that it absolutely is.

2 First, your Honor, all of this fraud emanated from the  
3 defendant's network of companies. He had several companies,  
4 BRI Resources, Inc. He had Rawlins Capital Group, Rawlins  
5 Capital Corporation, BRI Business Services; all of these  
6 different companies that he used essentially to shuttle money,  
7 to shield money, to obscure the real essence of what he was  
8 doing, which was taking money from these two companies.

9 And the charts displayed by Agent Delzotto in his  
10 testimony showed that. He essentially started with several  
11 bank accounts from the companies and had this money filter into  
12 a whole different series of entities so that it wasn't all in  
13 one place. It wasn't all identifiably being stashed so that it  
14 could be uncovered and recovered. And so we think that alone  
15 adds complexity to this scheme. He wasn't just simply moving  
16 money from one place to another.

17 He also routinely made inflated false representations  
18 about himself and his businesses to give the impression that he  
19 was an extremely successful businessman, someone very well  
20 respected in the industry, posted on his website major Fortune  
21 500 corporations that he claimed were, quote, our clients but,  
22 in fact, he had no relationship with, as entered through a  
23 stipulation at trial.

24 So again, this piece of his conduct was, your Honor,  
25 akin to -- we're not saying it's equivalent to, but it's akin

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1 to the enumerated grounds for a sophisticated means enhancement  
2 in the guidelines, which is the use of shell companies and  
3 fictitious entities. It was of that flavor of activity where  
4 he's using a kind of a manufactured network in order to conceal  
5 a fraud. So that was the first aspect that we think counsels  
6 in favor of sophistication.

7 The second are all of the fraudulent documents, the  
8 forged signatures. He forged Brian Sharp's signature on an  
9 altered contract with Prime Health services. I mean, the most,  
10 you know, sort of galling aspect of this was the Philip Morris  
11 documents. He actually had documents bearing Philip Morris  
12 letterhead, with the fictitious name of an employee based in  
13 Switzerland, and showed it to multiple people in order to  
14 convince them that he was owed over \$8 million.

15 There are cases, your Honor, we cite which say that  
16 using forged documents in the context of a larger, more complex  
17 scheme counsels in favor of a sophisticated means enhancement.  
18 He also forged the signature of his own employee, Ella  
19 Chadwell, on a mortgage application for his son, which, again,  
20 we think just adds to the multifaceted nature of his fraud. He  
21 was not only defrauding the companies but misappropriating his  
22 employees' names in order to achieve personal gain.

23 And then perhaps the most persuasive aspect that  
24 counsels in favor of the enhancement is his use of the Fifth  
25 Third bank account that was held in Prime Health Services'

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1 name. That bank account we learned at trial had been opened by  
2 the company in an effort to obtain a loan. I guess it was a  
3 requirement to have a checking account with the bank in order  
4 to get a loan. The loan was obtained. And the account sat  
5 dormant. Nobody knew. The CEO didn't know that that ever  
6 would be used. It was opened just to get a loan.

7 What Mr. Rawlins did is he opened, activated the  
8 checking account, started using it to receive funds from other  
9 Prime Health Services accounts, mainly through checks, which he  
10 made look like purely internal transfers. The purpose of that  
11 was so -- and again, Mr. Rawlins was the only one receiving  
12 statements for the Fifth Third account. So money that was  
13 going in, people at the company could see money going from a  
14 Prime Health account to another account and would assume it's  
15 some sort of internal transfer. What Mr. Rawlins did on the  
16 back end of that account -- in other words, the parts that  
17 would only show up in the statements for that account -- was  
18 transfer the funds to his own accounts, both credit card and  
19 bank accounts.

20 And so this was a sophisticated way to allow the fraud  
21 to continue, to mask his fraud by making it appear like a  
22 series of internal transactions, but to funnel money out the  
23 back door of the company into this network that he maintained.  
24 And so, your Honor, we think that taken together, all of these  
25 means, while each one on its own might not support a

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1 sophisticated means enhancement, taken together, they certainly  
2 paint the picture of a fraud that was complicated and  
3 intricate.

4 THE COURT: Thank you.

5 Mr. Brill?

6 MR. BRILL: Thank you.

7 I think it's important to just say that this is a  
8 fraud case. And in fraud cases, people -- in any fraud case  
9 there is stealing involved. And if there is stealing involved,  
10 then there is an attempt by the person who is doing that  
11 stealing to hide that stealing, unless the person has the  
12 intention to get caught or has some other motive in mind, other  
13 than taking the money that the person wants to take.

14 So, you know, I think it's important not to confuse  
15 any type of fraud case or wire fraud case with the idea that it  
16 automatically rises to the level of sophisticated means. That  
17 guideline is an important one, and it should be saved for  
18 frauds that are really sophisticated and are really complex and  
19 are really intricate. I mean, the guidelines don't say  
20 "really." The idea is they try to distinguish what is  
21 sophisticated and what is just -- I think I'm quoting a case in  
22 another circuit -- a garden variety fraud or a generic fraud,  
23 which is the stealing of money and trying to hide that stealing  
24 so that you have the money and can get away with it.

25 So the idea that there's secrecy, the idea that

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1 there's some type of concealment, the idea that there is an  
2 attempt to do these things does not automatically make it  
3 sophisticated. The idea that some documents are forged is not  
4 a sophisticated concept. You don't have to be sophisticated or  
5 complex or an intricate person to come up with that particular  
6 plan to create a letterhead on your computer -- not conceding  
7 any of these arguments -- and then to portray that letter as  
8 being real. The idea that you open bank accounts in your name,  
9 as the allegation is, and put money into there in your name is  
10 not automatically sophisticated but could be a good way to try  
11 to conceal the particular money that you're trying to take  
12 without authority. So I don't think the record supports a  
13 sophisticated means enhancement.

14 I know there's a Fifth Circuit case called *Valdez*.  
15 And I'm sorry, I don't -- actually, I do. 726 F.3d 684 out of  
16 the Fifth Circuit, 2013 case, where the Court does not find  
17 sophisticated means and mentions generally why they don't. In  
18 that case there are no false names used by the defendant.  
19 There are no fictitious entities used by the defendant. There  
20 are no shell companies. I think it's a real stretch what the  
21 government is arguing, that because he allegedly misled people  
22 on his website that he had certain clients is -- it's not  
23 really all that sophisticated either. And dare I say, you  
24 know, there are people that are not sophisticated that are  
25 inclined to build themselves up and may exaggerate their

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1 particular past. Obviously I'm not condoning that, but it  
2 doesn't make it sophisticated or a shell company if they do  
3 that.

4           There are no complicated financial transactions,  
5 meaning that what we have here is -- again, assuming for the  
6 argument here, and understanding that Mr. Rawlins denies it,  
7 but assuming it is true, what we have here is essentially an  
8 above-board stealing of money which essentially is, let me  
9 write a check from an account that belongs to Prime Health.  
10 It's not as if Mr. Rawlins necessarily didn't open up this  
11 Fifth Third account, where the allegation is that the money  
12 flowed through there. This is a Prime Health account.

13           And I think that there is evidence at trial that  
14 statements came to Prime Health, and I think it was Ms. Haywood  
15 that perhaps received the statements. And I think someone may  
16 have asked her if she saw the statement or opened the statement  
17 or noticed the moneys going through there. But that's  
18 certainly not concealment or certainly not sophisticated  
19 concealment, especially when the bank account belongs to a  
20 Prime Health or Core Choice.

21           Furthermore, on that similar point is that the money  
22 that came -- the money which was presented at trial went from  
23 this account and perhaps again into Mr. Rawlins' other bank  
24 accounts, again, in his particular name, was then used to pay  
25 off American Express expenses. Also Mr. Rawlins' name. So

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1 it's essentially at its core the stealing of money to pay your  
2 credit card so you can buy luxurious things.

3 And the way in which you do that is you use one of the  
4 company's bank accounts in their name and send the money to an  
5 account that is in your name. So, again, the Court should  
6 distinguish between a generic or an ordinary wire fraud case  
7 and whether or not the person used sophisticated means. And  
8 I'm sure the Court, either in its personal experience or is  
9 aware of cases where there's real sophistication and real  
10 intricacy when it comes to stealing particular money. But the  
11 idea that someone does steal it by using different bank  
12 accounts in their name or trying to hide it from the people  
13 they're stealing from certainly doesn't make it sophisticated.

14 There was no expert that was brought in to trial by  
15 the government to establish that, ladies and gentlemen of the  
16 jury, you might not understand this but here is what was really  
17 happening here. That wasn't done because the jury and all of  
18 us, when it's presented, can understand the evidence. And so  
19 it's hard to argue that it was so sophisticated if it was  
20 essentially ordinary.

21 So we would object to that enhancement.

22 THE COURT: All right. Thank you.

23 Obstruction?

24 MR. DEFILIPPIS: Yes, your Honor. And if I may have  
25 one point on the sophistication.

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1           Perhaps one of the most sophisticated things the  
2 defendant did was the opening of the Coface insurance policy,  
3 where he not only -- he essentially went to Coface, an  
4 insurance company, and fraudulently opened it by claiming a  
5 bunch of receivables from Prime Health and Philip Morris. And  
6 this is, to be honest, your Honor, it's the kind of insurance  
7 policy that I'd never heard of before this case. It's a fairly  
8 complex kind of receivables insurance, where you are  
9 essentially insuring yourself against a nonpayment of something  
10 you're owed from another company.

11           He gets the insurance policy by claiming receivables  
12 from Prime Health. In other words, he and Franklin Palm are  
13 purporting to protect themselves against a default from Prime  
14 Health. He then goes into Prime Health's books and deducts  
15 over \$300,000 for purported insurance. When questioned about  
16 that eventually, he claimed that this was insurance obtained  
17 for Prime Health's benefit. In fact, it was insurance that he  
18 had obtained but not actually paid for to protect his company  
19 against a default from Prime Health.

20           So it's this very complicated leveraging of a fraud  
21 against a fraud, which we think, again, underscores that this  
22 was not an unsophisticated scheme. This was a complicated  
23 scheme. Even understanding the insurance itself isn't easy,  
24 and he's leveraging it to extract money from Prime and then  
25 cover it up when asked about it.

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1           Your Honor, moving to the obstruction, we think there  
2           are several separate bases in the record to conclude that  
3           Mr. Rawlins committed perjury and is, therefore, appropriate to  
4           apply the obstruction enhancement. The first were his  
5           assertions on multiple occasions on direct and  
6           cross-examination -- your Honor alluded to these before -- that  
7           he was authorized to carry out all of the transactions he  
8           undertook on behalf of Prime Health and Core Choice. That was  
9           flatly contradicted by the testimony of Brian Sharp. It was  
10          flatly contradicted by the testimony of Dr. Gass.

11          And it wasn't limited to just general assertions by  
12          Mr. Rawlins that he was authorized or vague assertions that he  
13          was authorized. In fact, on cross-examination, he was shown at  
14          least four specific e-mails where Brian Sharp said to him, stop  
15          withdrawing funds in large amounts from credit cards, on credit  
16          cards. Stop withdrawing funds. Multiple occasions he was  
17          shown those e-mails and said, did you understand that you were  
18          authorized to do this even after receiving this e-mail?  
19          Absolutely, were the answers. And it was so flatly implausible  
20          and so flatly incorrect that we think those alone support a  
21          finding that he committed perjury and that he's eligible for  
22          the enhancement.

23          Second, your Honor, his attorney on redirect asked  
24          him --

25          THE COURT: And just to spit out materiality, it goes

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1 to the core of fraud, which was expenditure of unauthorized --

2 MR. DEFILIPPIS: It does. That is really the essence  
3 of the fraud. He was asked on redirect by his attorney, did  
4 you, quote, do anything to conceal the wires or checks from  
5 Brian Sharp? And those were the ones that were alleged to have  
6 been used for personal expenses.

7 Mr. Rawlins responded, absolutely not.

8 I think our entire discussion earlier about the Fifth  
9 Third account, among other things, the false notations in  
10 company records that particular payments were for taxes or fees  
11 or due diligence, all of those were plain efforts by  
12 Mr. Rawlins to conceal his withdrawal of funds, and so we think  
13 make that statement absolutely not in response to, did you do  
14 anything to conceal the wires or checks from Brian Sharp?  
15 Again, a flat falsehood. He did many things to conceal his  
16 withdrawals from Brian Sharp.

17 And then finally, your Honor, and this may be the  
18 strongest example, but your Honor may recall there was a  
19 bankruptcy deposition in which Mr. Rawlins in 2011 was shown an  
20 independent accountant's report that had been submitted to the  
21 Bank of America by Mr. Rawlins' company. And it purported to  
22 be an independent analysis of his company's financials from an  
23 actual group called Hubbard Financial Services. Mr. Rawlins,  
24 it turns out, was shown this document during the bankruptcy  
25 deposition in 2011. And he was asked, did you prepare this

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1 document? And he was asked in four separate ways, which we lay  
2 out in our briefing, you know, did you prepare the document?  
3 On each occasion his answer was yes, I do, or yes, or as an  
4 example of what we had requested he prepare for us, and then  
5 finally asked when he prepared it, exactly.

6 Then came trial. And on cross-examination he was  
7 shown the same document. He was asked if he prepared it, and  
8 he said no. Who prepared it? Franklin Palm. That was a  
9 purported associate of Mr. Rawlins. That, your Honor, we think  
10 is plain as day that he said one thing in one proceeding,  
11 another thing here. Why did he do it? He did it because the  
12 document had essentially been revealed as fraudulent in the  
13 prior proceeding. It was something that Hubbard Financial  
14 Services did not endorse, and yet his company submitted it to  
15 Bank of America. He actually agreed on the stand in this trial  
16 that it was, quote, absolutely and wholeheartedly agreed it was  
17 a fraudulent document. So the motive was clear why he wanted  
18 to distance himself from it here. It was a fraudulent document  
19 submitted by his company. And he lied to distance himself from  
20 that.

21 Your Honor --

22 THE COURT: And the materiality of that?

23 MR. DEFILIPPIS: The materiality of that is that,  
24 again, it goes into the pattern or course of conduct of his  
25 fraud, which was repeatedly and continually to misrepresent the

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1 financial stability and success of himself and his companies in  
2 order to engender trust from financial institutions, from  
3 victims, in order to pump up his image as a way to get money.

4 THE COURT: But he didn't do that in his testimony  
5 here, right? He distanced himself from a fraudulent report  
6 that did that.

7 MR. DEFILIPPIS: That's right, your Honor. But,  
8 again, he lied in an effort to distance himself from those --  
9 from his fraud, from his fraudulent efforts to lie about his  
10 company and his business and his success. He lied about a  
11 matter that was absolutely material to this case and this  
12 fraud, which was his efforts to do that.

13 THE COURT: Okay. Mr. Brill?

14 MR. BRILL: So again, your Honor, this enhancement  
15 also calls just for the point to be made that, as we all know,  
16 a defendant has the utmost constitutional right to take the  
17 stand and testify in his own -- in his or her own defense. And  
18 the courts make it very clear that they do not -- I think they  
19 go out of their way to make sure that an obstruction of justice  
20 enhancement or perjury enhancement, as it's called, is not  
21 utilized in any way to burden a defendant's right to do that.

22 So with all due respect, I ask the Court to, again --  
23 respectfully I say this -- to keep that in mind only because it  
24 involves the most sacrosanct aspect of our system, which is  
25 that a defendant should be -- obviously they don't have a right

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1 to commit perjury, but they should be completely unfettered if  
2 they desire to take the stand in their defense and testify to  
3 their theory of their defense and to deny the allegations made  
4 by the government. And a denial of the allegations made by the  
5 government, and at the same time testifying that what they did  
6 was legitimate and what they did was proper and what they did  
7 was authorized, as Mr. Rawlins did, does not in and of itself  
8 automatically mean perjury, despite the fact that the jury came  
9 to the opposite conclusion.

10 So I think it's really important to mention the idea  
11 that there needs to be a clear-cut case that there was perjury  
12 that was different from Mr. Rawlins testifying in his own  
13 defense and denying the allegations that the government made  
14 against him.

15 The three aspects or the three instances that the  
16 government cites are essentially that he committed perjury  
17 because he believed what he said on the stand, that he was  
18 authorized to make withdrawals and wires. Well, that is the  
19 crux of the theory of the case. So it is hard for me to  
20 understand how we distinguish or how the Court can distinguish  
21 his testimony to that fact as his denial of guilt and his  
22 belief and distinguish that from the government's argument that  
23 this is a -- pure lies and perjurious.

24 The evidence that the government uses to make that  
25 particular point is that there are e-mails that were drafted by

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1 Mr. Sharp that Mr. Rawlins was shown, and then asked if he  
2 still believed that he had the authority to make those  
3 withdrawals. Well, it is Mr. Rawlins' belief that there was  
4 appearances made by Mr. Sharp that there was an understanding  
5 between him and Mr. Sharp, and that he still believed, despite  
6 the language of the e-mails, that he was in the position of  
7 authority and had the permission to use those -- that  
8 particular money as compensation for the services that he  
9 rendered.

10 The e-mail's not all that -- as concrete as the  
11 Court -- I'm sorry, as the government wants the Court to  
12 believe. Mr. Sharp mentions no withdrawals for large,  
13 quote/unquote. So what does that mean? Does that mean he had  
14 permission to withdraw money for things other than large? And  
15 what is large? So it is not altogether black and white that,  
16 when asked if Mr. Rawlins still believed he had permission to  
17 make those withdrawals, that it was clear that he didn't, and  
18 he was lying when he said that he did. The concealment of the  
19 withdrawals when he was asked whether or not he did that from  
20 Mr. Sharp, I think the Court -- I cite the Court to my other  
21 argument with respect to sophisticated means, which is how  
22 concealed were they?

23 This was an account, the Fifth Third account, that was  
24 utilized for the money to come in and out. Sharp had access to  
25 it. It was a Prime Health account. So when asked, did he

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1 conceal these withdrawals from Mr. Sharp, you know, I think  
2 that in the very least it passes a straight-faced test that he  
3 did nothing to conceal those items because Mr. Sharp was aware,  
4 essentially aware of the money leaving the company and going  
5 into an account that the company had access to and started. So  
6 I don't think that's a black-and-white issue either. And I  
7 think that it certainly is not clear enough to say that he  
8 committed perjury when he denied whether or not he concealed  
9 these particular withdrawals.

10 And lastly, the deposition testimony. I think your  
11 Honor's questions hit the nail on the head. I think that's the  
12 best point with respect to that last item. And I think it's a  
13 stretch for the government to argue that that is material to  
14 this particular case. I mean, this case involves the stealing  
15 of Prime Health and Core Choice. That is the bulk of the  
16 allegations of the loss, substantial portion of the loss. And  
17 whether or not there is an instance where Mr. Rawlins, you  
18 know, gives an inconsistent statement with respect to what he  
19 did with respect to a document that has really nothing to do  
20 with this case, that it was part of the bankruptcy proceeding  
21 in 2012 and it was really utilized, I think, by the prosecutors  
22 here just to establish lack of credibility, it certainly didn't  
23 go to the proof.

24 Certainly the jury is not going to acquit or convict  
25 Mr. Rawlins based on the idea of whether or not -- you know,

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1 what his answers were with respect to a document that stemmed  
2 from a prior bankruptcy proceeding. That is what impeachment  
3 is for. And that is a classic prior inconsistent statement;  
4 that if he made a statement at a deposition in a separate  
5 proceeding that the government feels is inconsistent with the  
6 one he made here in court, then they have every right to  
7 impeach him. And the prosecutor here during cross-examination  
8 did just that.

9 And so on top of that, to say, oh, yes, and it's  
10 perjurious and he obstructed justice when he gave an  
11 inconsistent statement I think is a dangerous thing. But I  
12 don't think it rises to the level of materiality. So we would  
13 object to that particular reason as well.

14 I think the record is insufficient to establish such a  
15 serious enhancement as this one.

16 THE COURT: All right. Thank you.

17 And I'm just going to give you my conclusions on the  
18 calculation. Any other objections to -- I suppose, Mr. Brill,  
19 to the government's proposed calculation?

20 MR. BRILL: No.

21 THE COURT: And so, Mr. Brill, I think I understand.  
22 You make a general argument about loss amount consistent with a  
23 total denial of -- based on a contention of authorization.  
24 Setting that aside, understanding that's preserved but setting  
25 that aside, you would argue for a calculation of an offense

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1 level of 27, because 18 base levels is 7 and 18 for the loss  
2 amount you contend --

3 MR. BRILL: That would be 25, your Honor.

4 THE COURT: So -- right. Well, go ahead.

5 MR. BRILL: No, I'm sorry. I'm sorry to cut you off.

6 THE COURT: That's all right.

7 MR. BRILL: I didn't know you gave a total amount.  
8 Just with respect to loss, we would seek or recommend a finding  
9 of 7 plus 18, which is 25.

10 THE COURT: Right.

11 MR. BRILL: Yes.

12 THE COURT: And then 7 plus 18 -- I'm just going to  
13 the PSR. So 7 plus 18, 25. You argue against the two-level  
14 enhancement. You don't argue against the adjustment for role.  
15 So that would be plus two, which gets us to 27?

16 MR. BRILL: You're correct.

17 THE COURT: And then you argue against the obstruction  
18 enhancement. So it would be a total of 27?

19 MR. BRILL: That's correct.

20 THE COURT: Which would be with a criminal history  
21 category of I?

22 MR. BRILL: 70 to 87 months.

23 THE COURT: Range of 70 to 87. Okay.

24 Let me state my conclusions on the calculation and  
25 then hear general arguments.

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1           Turning to loss amount, I do conclude that the  
2 government has established by a preponderance of the evidence  
3 that the loss amount exceeds \$9.5 million.

4           First, the evidence at trial established that  
5 Mr. Rawlins' fraud was responsible for approximately \$8 million  
6 in loss to Prime Health and Core Choice during the period of  
7 2011 to 2013. To name some of the evidence I rely on for this  
8 conclusion, it includes but is not limited to the testimony of  
9 Scott Center and the testimony of Special Agent Delzotto. And  
10 with respect to Scott Center's testimony, particular reliance  
11 on Government Exhibit 486; and with respect to Agent Delzotto's  
12 testimony, Government Exhibit 490. As a general matter I'll  
13 state I did find the testimony of both Mr. Center and Special  
14 Agent Delzotto to be thorough and credible and responsive, and  
15 that's the first aspect of my conclusion.

16           Second, the evidence at trial established that  
17 Mr. Rawlins engaged in approximately \$2 million in fraudulent  
18 transactions at Prime Health and Core Choice during the 2009 to  
19 2010 period. And here, I rely again on the credible testimony  
20 of Agent Delzotto, as well as Government Exhibits 513-9 and  
21 513-10.

22           Third, as to relevant conduct that was intended loss,  
23 the trial record also established by a preponderance of the  
24 evidence that Mr. Rawlins intended to inflict an additional  
25 \$1.3 million in losses upon Janet Godard of Aerofund. I recall

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1 well Ms. Godard's credible testimony in this regard and  
2 understood what was described consistent with my relevance  
3 determination, as consistent with the overall fraud being  
4 established, and pattern as well.

5 I'm also including in my calculation a related conduct  
6 established by preponderance of the evidence concerning the  
7 \$67,000 in losses to Shane Gaddes and Mark Sobel, the  
8 Westcrete, Inc. individuals who also testified credibly at  
9 trial, as well as the \$1.5 million sought of Dr. Gass with  
10 requests to repayment of the Bank of America loan.

11 I'm not including the \$1.3 million obtained by  
12 Mr. Rawlins from Mr. Aurora. I think it probably could be  
13 included, but I need not come to conclusion as to the  
14 appropriateness of that, in light of the repayment of those  
15 funds, although I think it is undisputed that the repayment  
16 occurred after the fraud.

17 The primary argument in opposition to all of these --  
18 there are several arguments, but the primary argument is that  
19 Mr. Rawlins was in one way or another entitled or authorized to  
20 receive the expenses or withdraw the funds. I'll state more  
21 about this in connection with my conclusion regarding  
22 obstruction, but I simply did not find Mr. Rawlins' testimony  
23 on these points credible, and his contentions were refuted in  
24 my view beyond a reasonable doubt, but certainly by a  
25 preponderance of the evidence. And that is consistent

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1 certainly with the jury's verdict.

2 And I, too, rejected it and conclude that the  
3 appropriate loss amount, based on the preponderance of the  
4 evidence, is calculable with reasonable certainty to at least  
5 \$9.5 million but less than \$25 million. And, therefore, 20  
6 points must be added to the offense level pursuant to  
7 2B1.1(b)(1)(K).

8 As to the sophisticated means enhancement, as the  
9 application note indicates and case law supports, sophisticated  
10 means refers to especially complex or especially intricate  
11 offense conduct, and includes hiding assets or transactions  
12 through the use of fictitious entities, corporate shells or  
13 offshore financial accounts. As the law makes clear in this  
14 circuit, each step need not be elaborate but may be deemed  
15 sophisticated if all the steps, when linked together, exploit  
16 different vulnerabilities and different systems in coordinated  
17 way.

18 The government has established again by a  
19 preponderance of the evidence that that was the case here.  
20 Mr. Rawlins' scheme used a complex network of entities. He  
21 used elaborate methods in carrying out this fraud for an  
22 extended period of time. And it includes, but is not limited  
23 to, concealment of wire transfers through falsified business  
24 records, secret use of a company bank account, as well as  
25 forged documents and contracts. I do think the example

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1 Mr. DeFilippis noted here of the fairly complicated insurance  
2 policy structure that has been described as leveraging of the  
3 fraud against the fraud is but one example of a complicated  
4 transaction that was used here to facilitate this substantial  
5 fraud.

6 And I did look quickly at the Valdez case Mr. Brill  
7 cited and think it readily distinguishable. This was not  
8 generic falsifications, nor garden variety, but I think fits  
9 cleanly into the enhancement's application.

10 And as I've indicated now, turning to the obstruction  
11 of justice enhancement, based on my observations of  
12 Mr. Rawlins' testimony, which I deemed not credible and which  
13 was directly contradicted by substantial other evidence,  
14 including multiple credible witnesses and significant  
15 documentary proof, I conclude that Mr. Rawlins did give false  
16 testimony at trial that was material to the fraud.

17 For example, he repeatedly asserted that he had  
18 authorization for his expenditures from Brian Sharp. He was  
19 shown specific e-mails from Mr. Sharp to the contrary, and I  
20 well remember Mr. Rawlins' entirely implausible testimony that  
21 in the face of those unambiguous e-mails, and in light of  
22 Mr. Sharp's credible testimony about them, Mr. Rawlins  
23 nonetheless testified that he continued to believe he had  
24 authorization following receipt of them. And that was a deeply  
25 noncredible statement offered here in court under oath and

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1 goes, as discussed with counsel, to the core of the fraud  
2 allegations here.

3 And I'll just say, I think it's -- I honor well the  
4 right to testify, to deny allegations asserted by the  
5 government. Mr. Rawlins did exercise that right, but he made  
6 false and material statements and specific and continued  
7 falsities during his testimony that readily allows the  
8 application of the obstruction enhancement here.

9 He also materially and falsely denied that he took  
10 steps to conceal wires and checks used for personal expenses  
11 from Sharp and did so again in the face of abundant documentary  
12 and credible witness testimony to the contrary. He may well  
13 also have attempted to falsify an independent accountant's  
14 report as part of his efforts to deceive others regarding the  
15 legitimacy of his claims of consultancy work and falsely denied  
16 it here.

17 For all of these reasons, I must apply the two-point  
18 enhancement for obstruction pursuant to 3C1.1.

19 Therefore, using the November 1, 2015 edition of the  
20 sentencing guidelines, I do conclude that the base offense  
21 level was 33. The criminal history category here is I, in  
22 light of zero criminal history points. And, therefore, the  
23 sentencing guideline range is 135 to 168 months.

24 Turning to formal departures upward or downward within  
25 the guideline system, I think I understood the arguments to be

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1 made here in the briefing to go to 3553. And so I just want to  
2 confirm that neither side seeks an upward or downward departure  
3 within the guideline system.

4 MR. DEFILIPPIS: That's right for the government, your  
5 Honor.

6 MR. BRILL: Yes, your Honor.

7 THE COURT: Thank you.

8 I have, nevertheless, considered whether there's an  
9 appropriate basis for departure from the advisory range within  
10 the guideline system and did not find grounds warranting  
11 departure, although I am open, as has been argued in the  
12 papers, to hearing arguments with respect to variance.

13 Mr. DeFilippis, does the government wish to be heard  
14 further with respect to sentencing?

15 MR. DEFILIPPIS: Yes, your Honor. And we do have --  
16 your Honor may be aware, but we do have one victim who would  
17 like to speak. I can speak either before or after that victim,  
18 whatever your Honor prefers.

19 THE COURT: I'll let the -- and the name of the  
20 person?

21 MR. DEFILIPPIS: It's Dr. Gass, Dr. Steven Gass.

22 THE COURT: Dr. Gass may speak. If you would, sir,  
23 come to the podium.

24 DR. GASS: Good afternoon, your Honor.

25 THE COURT: Good afternoon.

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1 DR. GASS: First, I'd like to thank the Court for  
2 giving us this opportunity to speak. I'm also speaking on  
3 behalf of Brian Sharp and Prime Health Services, as Mr. Sharp  
4 was unable to be here and had to remain in Tennessee because  
5 his wife had surgery this week, and he had to help out with  
6 family matters.

7 We would also like to thank Andrew Bauer, formerly of  
8 the US Attorney's Office; Andrew DeFilippis of the US  
9 Attorney's office; Christopher Delzotto of the FBI; and the  
10 respective staffs for the tireless work and for the excellent  
11 job that they did. They are bright young men and women. And  
12 we believe that they have bright futures ahead of them.

13 It gives me no great pleasure to be here today,  
14 because this is a situation that should have never happened.  
15 We all have been put through unnecessary hardships because of  
16 Mr. Rawlins' devious actions. And it has affected all of us  
17 professionally and personally.

18 Mr. Rawlins used all of his efforts to deceive, to  
19 subvert and ultimately steal approximately \$9 million from  
20 Prime Health Services and approximately \$1 million from Core  
21 Choice, and who knows how much from other people, in an  
22 egregious manner in order to personally enrich himself, all at  
23 the expense of trusting and hard-working people.

24 Mr. Sharp has asked me to specifically state that  
25 while Mr. Rawlins supported his lavish lifestyle by abusing his

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1 position of trust, Brian Sharp found his company in the  
2 constant financial and organizational struggle. One of  
3 Mr. Rawlins' primary responsibilities was to enhance Prime  
4 Health and later Core Choice's financial status and facilitate  
5 their growth. But his deceptive criminal actions generated the  
6 opposite result.

7 Over the course of the five years with Prime Health  
8 Services and three years with Core Choice, Mr. Rawlins  
9 embezzled millions of dollars and took elaborate steps to cover  
10 it up. Actions like this have predictable and far-reaching  
11 effects on Prime Health Services and Core Choice as both  
12 companies attempted to grow. Mr. Sharp would also like it to  
13 be known that Mr. Rawlins' multiyear embezzlement also affected  
14 employee morale, as both companies weren't able to grow at the  
15 rate that they should have, given their place in the industry.

16 His long-standing fraud scheme left both companies  
17 strapped, unable to hire new employees, improve benefits or  
18 raise the salaries of current employees who were taking on  
19 extra workload. Even after the fraud was uncovered, employees  
20 had to spend significant amounts of time and work long hours  
21 trying to figure out and clean up the many problems created by  
22 Mr. Rawlins' actions. The net result was a frustrated work  
23 force struggling to catch up on their day-to-day work. The  
24 fact that Mr. Rawlins stole the Core Choice payroll from  
25 November of 2013 shows the callous and uncaring manner in which

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1 he operated.

2 Our employees, two of which are here today, depended  
3 on their paychecks to pay their bills, their rents, their  
4 mortgages and feed their families. The employees of Prime  
5 Health Services, many of whom I know very well -- and my  
6 employees are honest, hard-working people who have great  
7 attitude and care about the work that they do. In fact, your  
8 Honor, in our case, Core Choice, he nearly forced Core Choice's  
9 very existence.

10 I guess what shocks me personally even more is the  
11 fact that he perpetrated this massive fraud against his  
12 so-called dear friend, Brian Sharp. This makes it very evident  
13 to me of his sociopathic mantra and his failure to take  
14 responsibility.

15 Further, to this day he has no remorse. It is  
16 actually amazing, with the events that have transpired in this  
17 prosecution and conviction, that the actions of Mr. Rawlins  
18 continue to harass us. It's like a chronic disease that just  
19 keeps coming back.

20 Most recently, I was contacted by the Internal Revenue  
21 Service that the payroll taxes for the fourth quarter of 2012  
22 were not paid. And when we researched the issue, we found that  
23 those funds were withdrawn from our payroll account and  
24 transferred to one of Mr. Rawlins' accounts.

25 He even had the misguided notion that I am the one who

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1 turned him in to the government. While it is not true, and I  
2 was not the one that did, I surely wish I had been. I guess  
3 with age comes wisdom, and in my mind to be able to work hard  
4 and provide for my family and children, grandchildren, is what  
5 is important. The values exhibited by Mr. Rawlins here are  
6 just not what is acceptable in proper society. And he needs to  
7 know that.

8 I realize at the beginning of this investigation that  
9 we probably would never recover very much here, which is why we  
10 have worked even harder to make Prime Health Services and Core  
11 Choice the entities that they are today. I am happy that the  
12 truth has come out. And it is my hope that Mr. Rawlins  
13 receives the harshest penalty allowed by law, so that he never  
14 have the opportunity to do this to anyone again. To me, that  
15 would be justice.

16 Again, thank you collectively to the government for  
17 protecting us against the likes of this individual. And I hope  
18 that this will serve as an example to anyone who even thinks of  
19 doing this or doing anything like this to anyone else again.

20 Thank you, your Honor.

21 THE COURT: Thank you, Doctor.

22 Mr. DeFilippis?

23 MR. DEFILIPPIS: Yes, your Honor. Thank you.

24 Your Honor's very familiar with the facts of this  
25 case, with the trial record. You presided over the two-week

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1 trial. And sentencing is a time when the government candidly  
2 is responsible for telling the Court the aggravating and  
3 mitigating factors here. And, your Honor, looking at the  
4 record and at the defendant's behavior here, it is very  
5 difficult to find even any mitigating factor in Mr. Rawlins'  
6 conduct.

7 As Dr. Gass mentioned, the nature of this fraud was  
8 heinous. It was despicable. It wasn't someone who preyed  
9 randomly on strangers. It wasn't someone who engaged in  
10 one-off instances of dishonest conduct. It was systematic. It  
11 was methodical. And most alarmingly, it targeted the people  
12 who trusted and liked him the most; his closest friends, his  
13 closest business associates, and ultimately enlisting his very  
14 family.

15 So, your Honor, in terms of the nature of the scheme,  
16 Mr. Rawlins is deserving of the harshest penalty, because it  
17 was an ultimate betrayal. He was given enormous trust by these  
18 companies and by the people around him. And he in a very  
19 calculating, very cold and very methodical way repeatedly  
20 betrayed that trust over the course of years.

21 Also, in terms of the nature of the defendant himself,  
22 he came from by all accounts what seems to have been a good  
23 family, a comfortable background. He had a perfectly normal  
24 and comfortable life and did this with no possible reason,  
25 motive or explanation. He carried out this fraud as a graduate

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1 of the Vanderbilt business school, as someone who was respected  
2 in his community and presumably his industry. And yet he  
3 decided to do this. He decided to take and take and take  
4 money, having not faced any disadvantage or hardship that would  
5 explain such behavior.

6 Your Honor, the defendant over the course of time was  
7 confronted. He was initially -- he had every opportunity to  
8 cease his fraud, to reconsider his conduct over the course of  
9 years. We saw the e-mails where he was questioned about  
10 withdrawals, questioned about why particular transactions were  
11 being taken. And every time it was more excuses, it was more  
12 lies, it was more manipulation. The defendant made no effort  
13 to come to grips with his conduct and no effort to stop what he  
14 was doing.

15 Your Honor, Dr. Gass said better than the government  
16 could the effects that the fraud had on his company and  
17 Mr. Sharp's company. But there were also very real individual  
18 victims of Mr. Rawlins' fraud. And you heard the testimony of  
19 Shane Gaddes from Westcrete, Incorporated, who literally was  
20 rendered to living in his car because of the \$67,000 that he  
21 lost because of Mr. Rawlins' fraud. His life was enormously  
22 disrupted by Mr. Rawlins. And he even to this day may not have  
23 recovered from those effects.

24 Mr. Rawlins was a serial fraudster, willing to deceive  
25 again and again and again, regardless of who he was deceiving

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1 and defrauding. And his lifestyle, your Honor, as you saw  
2 through the American Express bills, as you saw through all the  
3 records at trial, he was living -- he was taking every ounce of  
4 that money he stole and putting it to his own benefit and  
5 enjoying it.

6 Your Honor, the defense in their submission makes much  
7 of Mr. Rawlins' family relationships and of his wife on the  
8 degree to which she has good relationships with them and the  
9 degree to which they depend on him. In our view that makes  
10 this fraud all the more condemnable, all the more despicable,  
11 because knowing that he had a family that depended on him,  
12 knowing that he had sons who had no other source of income, and  
13 knowing that he had a wife who depended on him physically and  
14 emotionally, he built their entire future on essentially this  
15 fraud, which is now collapsed and will now destroy or  
16 significantly inhibit their lives. It's not a reason for  
17 leniency for this defendant. It's a reason for harsher  
18 punishment.

19 Your Honor, finally, the defendant to this day has  
20 shown absolutely no remorse. Again, there is no mitigation in  
21 his reaction to his charges, in his reaction to his conduct.  
22 He has shown no remorse. So even there, your Honor, there is  
23 nothing mitigating about the defendant's conduct.

24 So finally, to end on the factor of deterrence, a very  
25 stiff sentence is necessary here to send a message that when

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1 you commit a horrible fraud, when you let it carry on for years  
2 and years, taking millions of dollars, and make every effort to  
3 escape responsibility and ultimately show no remorse, you must  
4 serve a very substantial and lengthy time of incarceration.

5 Thank you, your Honor.

6 THE COURT: Thank you.

7 Mr. Brill?

8 MR. BRILL: Your Honor, sentencing law, as your Honor  
9 knows, mandates the Court to take a parsimonious view of  
10 sentencing. And given the fact that the guidelines are now  
11 advisory, it is entirely clear to all of us that practice that  
12 the Court is free to view not only the conduct engaged by the  
13 defendant, whatever that conduct is, but to also balance that  
14 with other factors that could mitigate a guideline sentence.

15 And despite what the government says with respect to  
16 those particular factors, we believe that they do rise to the  
17 level of mitigating. And we think that despite the conviction,  
18 and despite the conduct that has been presented against  
19 Mr. Rawlins, that his personal history and, most importantly,  
20 his family background, do and should allow this Court to  
21 mitigate what is essentially an eleven-and-a-half-year sentence  
22 on the bottom of the guidelines.

23 And so with respect to that, your Honor, I think that  
24 Mr. Rawlins' personal history, again, is important enough to  
25 persuade the Court to sentence Mr. Rawlins to something below

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1 eleven-and-a-half years, which we believe is excessive. And we  
2 believe that your Honor's interests in sentencing this  
3 defendant and any defendant would still be met below that  
4 particular range.

5 I think, first and foremost, what I think stands out  
6 with respect to Mr. Rawlins' background and personal history is  
7 his family's reliance on him. It is true that he is  
8 essentially the center point of his family and the glue that  
9 holds them together. There are differences or arguments as to  
10 how that came to be and why that is, but that doesn't deny the  
11 fact that that is the reality at this point; that Mr. Rawlins'  
12 wife, two sons mostly, parents that all live near or around  
13 Mr. Rawlins do depend on him in various ways; most importantly,  
14 his wife of 38 years.

15 You have read what was presented in our sentencing  
16 submission. She has suffered a fallback in 1993, and we've  
17 been told hasn't been the same since. As a result of that she  
18 has suffered physical disabilities, like head injuries,  
19 cognitive disabilities, emotional disabilities, but also  
20 physical disabilities, like fractured vertebrae, arthritis,  
21 migraines, insomnia, trouble walking and the need to continue  
22 to be treated medically. That's reality.

23 And we would ask that it's not ignored when the Court  
24 imposes a sentence on Mr. Rawlins. And I think to balance a  
25 sentence with that particular fact, again, does not interfere

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1 with what the Court is trying to convey and the message that  
2 the Court is trying to convey when it imposes sentence on  
3 Mr. Rawlins.

4 I think it's important to mention that probation came  
5 to that similar conclusion, which is that in their probation  
6 report, where they are permitted to recommend to the Court as  
7 to what factors they believe warrant a sentence outside of the  
8 guidelines, their statements to the Court were that the fragile  
9 health of the defendant's wife is a mitigating factor that may  
10 warrant a sentence below the guidelines or outside the  
11 guidelines.

12 And so obviously the Court doesn't have to adhere to  
13 that recommendation, but I think that probation certainly takes  
14 their calculations and their findings seriously. I wouldn't  
15 describe probation as a department that generally goes easy on  
16 defendants. And certainly the fact that they found this  
17 particular fact to be something that the Court could take into  
18 consideration to warrant a sentence outside the guidelines I  
19 think is something that the Court -- I would ask the Court  
20 should consider.

21 In Ms. Rawlins' letter, I thought what said it all was  
22 that she describes Mr. Rawlins as his world, her stability and  
23 her confidence. And again, obviously in an  
24 eleven-and-a-half-year sentence at this stage, it's  
25 catastrophic, and that we would ask that the Court takes that

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1 into consideration when imposing a sentence as to what is  
2 appropriate under -- using 3553 factors.

3 In addition to his wife, he has two sons that are very  
4 close to him; mostly his son Brandon, who also has medical  
5 issues but lives with Mr. Rawlins, along with his wife Molly  
6 and their son Ethan, which is Mr. Rawlins' grandchild. They  
7 live in Mr. Rawlins' house with him and his wife. It's my  
8 understanding that they've also suffered financial difficulties  
9 when their home went into foreclosure, which led them to  
10 Mr. Rawlins and his home. And so by the same token as  
11 Mr. Rawlins' wife, obviously an eleven-and-a-half-year jail  
12 sentence is something that will, again, as with Mr. Rawlins'  
13 wife, will cause tremendous disruption with respect to his son  
14 and his daughter-in-law and his grandchild.

15 These are not arguments that I'm making that should  
16 lead the Court to believe that I'm seeking that your Honor  
17 excuse what Mr. Rawlins has been convicted of. Despite the  
18 fact that he denies it, I understand that there's a conviction  
19 for very serious crimes. But these are what would be the  
20 result of a sentence that is in line with the guideline  
21 sentence.

22 There is more connection and more reliance from his  
23 parents as well. They are elderly people. His mother is just  
24 about 80 years old and his father is over 80. They have their  
25 own medical issues and they rely on Mr. Rawlins as well. So

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1 these are factors that the law allows the Court to consider.  
2 And I think that, given the situation, and given the guideline  
3 range as to where it is, I think that the Court -- we would  
4 respectfully urge the Court to consider them.

5 It doesn't stop with the family. There are contacts  
6 outside of Mr. Rawlins' family. At least five character  
7 witnesses testified here at trial. All had positive things to  
8 say about Mr. Rawlins, the positive experience they've had with  
9 him, productive relationships. Evidently no relationships that  
10 involved criminal conduct, fraudulent conduct.

11 One individual who stands out is Michael Atkins, who  
12 was a minister in Kentucky. His letter acknowledged the  
13 serious nature of the crimes that Mr. Rawlins was convicted of  
14 but, nevertheless, sought your finding of some level of  
15 leniency and forgiveness or compassion, to the extent that that  
16 would enter into and be balanced within your Honor's sentence.  
17 Despite the conviction, according to Minister Atkins, he still  
18 thinks of Steve as his brother, his word, and still sees the  
19 goodness in him.

20 So perhaps this is a complicated character, given the  
21 conviction on one hand, but given his relationship and  
22 connection to others on the other; one obviously being very  
23 negative, and the other seemingly positive and productive. So  
24 it seems as if a sentence should take that into consideration.

25 I will also mention, as I did in my memorandum, I'm

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1 not sure this necessarily goes to the nature and circumstances  
2 of the case, but just perhaps in your Honor's decision as to  
3 what is a just sentence and what is an appropriate sentence,  
4 that this guideline is dictated almost entirely by the loss  
5 amount in this case. And I think there's been much written  
6 about that. There are judges within this district that have  
7 written expansively on the idea that there is something that is  
8 hard to swallow when a guideline range is raised to a certain  
9 level, based substantially by the amount of loss that is found,  
10 in that it has essentially a disproportionate effect on the  
11 guideline calculation that it accounts almost entirely for the  
12 ultimate guideline calculation.

13 Here, a base offense level of 7, enhancements that  
14 we've argued that are serious enhancements that allow the Court  
15 to enhance the guidelines two levels but yet the loss amount  
16 allows this Court to make a finding of an additional 20 levels,  
17 which is obviously completely disproportionate to the other  
18 enhancements to the base level as well, it's obviously a  
19 factor. I'm mindful of the idea that the Court should take  
20 into consideration the allegations of the money that was taken.  
21 But it seems to me that the Court should not necessarily rely  
22 entirely on the idea that the guidelines believe that this  
23 amount rises to a particular guideline level and thus equals a  
24 particular guideline range, but that the Court should on its  
25 own -- obviously being advised by it, but use what it believes

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1 to be the appropriate sentence, given mostly what Mr. Rawlins'  
2 conduct was, and perhaps secondarily the idea of the loss that  
3 was found by the Court.

4 So I think that's an important point. And I think  
5 courts in this district and others continue to not disregard  
6 loss but to use it as less of a factor than it exists within  
7 the guideline calculation.

8 Lastly, I, again, will address just the interests of  
9 sentencing, which I know are extremely important to this Court.  
10 And that is that a sentence below the guideline level of the  
11 low end, eleven-and-a-half years, will certainly be a just  
12 punishment. The fact that his family, Mr. Rawlins' family, has  
13 already been impacted and will certainly be impacted by a jail  
14 sentence is punishment and a punishment that could be just also  
15 just by sentencing Mr. Rawlins to a sentence below  
16 eleven-and-a-half years. The idea that the Court needs to  
17 protect society from further crimes, I think, can be met by a  
18 sentence of less than eleven-and-a-half years for a 60-year-old  
19 individual who has no prior convictions.

20 And then with respect to deterring Mr. Rawlins,  
21 certainly a jail sentence below the guideline sentence will  
22 achieve that effect, but also, generally, in that a sentence  
23 below eleven-and-a-half years will certainly get the message  
24 across that the Court wants to get across, which is that crime  
25 does not pay, and this type of crime does not pay. And I think

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1 that can be met by a sentence below what we would argue to be  
2 excessive and inappropriate.

3 So I would again urge the Court to take into  
4 consideration his dedication as a father, as a son, as a  
5 husband, as someone who has been responsible by all accounts to  
6 these people in his family, and the fact that those people rely  
7 on him and the hardship that would involve and result with a  
8 sentence at guideline level.

9 So, respectfully, we ask that your Honor impose a  
10 sentence below the guideline range.

11 THE COURT: Thank you, Mr. Brill.

12 Go ahead.

13 MR. DEFILIPPIS: Your Honor, only one thing, which is  
14 just for the accuracy of the record, the probation department  
15 found that Ms. Rawlins' condition was not a mitigating factor.  
16 They said in the absence of --

17 THE COURT: What page are you on?

18 MR. DEFILIPPIS: Page 29.

19 THE COURT: I think it was an absence of  
20 documentation.

21 MR. DEFILIPPIS: In the absence of verification of his  
22 wife's condition and Rawlins' own assertion that she is  
23 basically self sufficient, the probation office does not  
24 consider her fragile health to be a mitigating factor  
25 warranting a sentence outside of the advisory guidelines range.

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1 So I just wanted -- I didn't want there to be confusion about  
2 their conclusion.

3 MR. BRILL: Yeah, no, I --

4 THE COURT: You were referring to -- where is the  
5 statement you were referring to?

6 MR. BRILL: That's what I'm trying to find, your  
7 Honor. I'll find that.

8 THE COURT: That was the bottom line conclusion, as  
9 was the recommendation of a 108-month sentence, which is the  
10 bottom of the guideline range, absent the obstruction  
11 enhancement.

12 MR. BRILL: Yes. I'm just searching for -- I don't  
13 think I put pages. I put part F. Yes. Page -- well, page 25,  
14 part F, paragraph 109: The fragile health of the defendant's  
15 wife is a mitigating factor which may warrant a sentence  
16 outside the advisory guideline range.

17 I don't know if she changed her mind. I'm not sure  
18 what was going through Ms. Dunn's mind. But that's the fact --  
19 that's the statement I was relying on.

20 THE COURT: Understood. Thank you.

21 Mr. Rawlins, you have no obligation to make a  
22 statement, but if you'd like to, you may do so now.

23 THE DEFENDANT: Thank you, your Honor, for the  
24 opportunity to say a few words.

25 Just looking at everything that's gone on, the

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1 appearance of me is one of a master criminal and a deceiver and  
2 a cheat and all those things. I would like for the Court to  
3 know that I am loyal, I'm faithful and I am kind. Loyal to a  
4 fault quite often. I have a wife who is very dependent on me,  
5 a grandson who adores me, and a son living with me with his  
6 wife and that grandson, due to health issues of his own.

7 In 1993 -- and I might back up a bit.

8 My wife and I married in 1979. And in 1982 she  
9 suffered the loss of a set of twins midstage pregnancy, which  
10 caused her severe mental issues at that point, but then two  
11 following sons and things went on, etc. And I moved into an  
12 outstanding position with the firm. We were building a new  
13 house.

14 And in 1993 she was -- this was in 1993, I should  
15 add -- she was at that house moving some things in the attic,  
16 hit her head on a cross beam and fell 16 feet, head first, to  
17 the floor. She suffered two concussions, some brain bleeding,  
18 broke up basically the entire right side of her body when she  
19 hit. And when they called me -- the builders called me at my  
20 office. And I beat the ambulance to the house. And when I  
21 did, of course, I was there when the paramedics came in. And  
22 they began asking her questions about herself; you know, who  
23 are you? What's your name? How old are you? Every question  
24 to a tee she answered as if she was me. And for the next year,  
25 near year, she was amnesic, if that's a word. She knew only

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1 me, our two sons and our dog.

2 A year after the fall it became apparent that I wasn't  
3 going to be able to meet the demands of the position I had. So  
4 I went into private practice, where I would have more control  
5 over my scheduling and being able to take care of her. She was  
6 left with the motor skill disabilities, lots of anxieties, lots  
7 of head issues; obviously severe pain from broken bones, etc.

8 To this day I still have to make sure her medications  
9 are correct every day, that everything is in place, that -- she  
10 has no math skills. She lost those in the fall. Can do very  
11 little around the house as far as cleaning and other things.  
12 But for those years from 1994 forward, I have taken care of  
13 her, and also my other son as well, in different ways. But  
14 I've taken care of her to the point where whenever there's  
15 separation, she panics. We were at the grocery one day not too  
16 long ago, and I actually went to the restroom. And while I was  
17 in there, I got a phone call, and it was her. And she was  
18 panicking. She didn't know where she was. And so I had to go  
19 and get her.

20 She went through back surgery in 2011 that alleviated  
21 some of the pain. Two weeks after her back surgery, her twin  
22 brother committed suicide, which forced a huge setback on her  
23 from a mental standpoint. For her -- and we'll be married 37  
24 years in a month and a half. For her, I am what is the center  
25 of her world. And I keep her world going. I would have had

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1 her here for the proceedings. I would have had others here,  
2 but she can't make the trip. And she emotionally couldn't  
3 stand it either.

4 So she will soon be homeless because she will lose our  
5 home. Without me, she will lose our home. She will lose  
6 everything. And I really don't know what will become of her if  
7 that happens.

8 My parents celebrate their 61st anniversary Saturday.  
9 My dad has Parkinson's. He has vascular disease. He's had  
10 five bypasses. He's had a stroke. He's had carotid surgery.  
11 My mom has congestive heart failure. And they depend on me for  
12 a lot of things; most especially, the bulk of what I do now for  
13 income is I run my mom's barn. And that's not something I have  
14 to get on tractors for and do things like that. I can do that  
15 from my home. And it's very successful, I might add.

16 They, too, will be impacted heavily by whatever  
17 happens to me. But most especially, they've all been impacted  
18 by the embarrassment, the -- everything that's gone along with  
19 this entire proceeding.

20 I'd like to say that one of my biggest faults -- and I  
21 have plenty -- it's been said that I have no remorse. Well, I  
22 have plenty of remorse, because one of the things that I have  
23 is loyalty. And had I not been loyal, we wouldn't be here  
24 today. Because in 2009, when Brian Sharp exercised  
25 infidelities with his then wife, it was recommended during the

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1 divorce proceedings that the company be broken up, sold, etc.  
2 He asked me to work with him to make sure that that didn't  
3 happen. I agreed.

4 His shareholders, who -- his former shareholders who  
5 he bought the company from, one of whom was one of my character  
6 witnesses, came to me because they were so upset with the  
7 situation, the cheating, etc. Wanted to foreclose on the  
8 company and wanted to make me the president of the company.  
9 Number one, I had no desire to be president of the company.  
10 Number two, my loyalty was such that I told him no, I would  
11 continue to work with him to get him the financing to make sure  
12 the company stood. And obviously the growth of the company was  
13 impacted through the divorce.

14 By the same token, there were attempts that we were  
15 still making to grow the company and grow other aspects of it.  
16 I had been asked to do certain things to make sure certain  
17 employees and certain others were not aware of how much money I  
18 was making and what he was paying me to do these things. I  
19 trusted him, and I told him I'd take whatever aspects there  
20 were to take, should some of those things be discovered.

21 I also trusted the gentleman named Franklin Palm, who  
22 I really cared significantly about. And he deceived both me  
23 and Mr. Sharp. And that extremely hurt me business wise,  
24 Mr. Gaddes, of which I'm terribly sorry for that situation, and  
25 the entire situation.

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1 I appreciate the opportunity to be able to say that.  
2 Mostly, I appreciate any consideration that can be given for my  
3 wife and my family and those who still do depend on me.

4 Thank you.

5 THE COURT: Thank you, Mr. Rawlins.

6 All right. Counsel, I'm going to take just a brief  
7 moment to finalize my sentencing conclusions. Anything else to  
8 raise before I do so?

9 MR. DEFILIPPIS: Not from the government, your Honor.

10 THE COURT: I'll return shortly. Thank you.

11 (Recess)

12 THE COURT: I just want to ask, before I get to  
13 sentence with counsel, whether anyone wanted to address -- I  
14 think we've agreed that the question of specific restitution  
15 amount, although I will make a conclusion that restitution is  
16 appropriate, we'll take the 90 days permitted to -- for me to  
17 hear additionally from whoever wants to weigh in on specific  
18 amount of restitution, in light of the letters received by me  
19 today from the victim entities. So I'll cabin that.

20 But with respect to the proposed forfeiture order,  
21 Mr. Brill, did you want to take anything up? And  
22 Mr. DeFilippis, to explain the amount of \$10,110,577.09?

23 MR. DEFILIPPIS: Yes.

24 THE COURT: Go ahead.

25 MR. DEFILIPPIS: So, your Honor -- and I believe this

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1 is entirely consistent with your factual findings today, but  
2 the -- so that includes first the losses to Prime Health, as  
3 proven at trial, which includes -- and the government's  
4 sentencing submission didn't break out that 8 million number as  
5 between Prime Health and Core Choice.

6 THE COURT: Right.

7 MR. DEFILIPPIS: But it includes -- and I don't have  
8 the exact number here, but approximately 7 million something in  
9 losses to Prime Health. It then includes \$294,832.68 to Core  
10 Choice, which was the one year that the FBI analyzed. It then  
11 includes \$2 million estimated by Agent Delzotto. And that, as  
12 it turns out, your Honor, is entirely allocated to Prime  
13 Health, because that analysis was based on records at Prime  
14 Health. So the total loss amount proven at trial to Prime  
15 Health becomes \$9,748,744.41.

16 THE COURT: 9 million?

17 MR. DEFILIPPIS: I'm sorry, yes, 9 million. The Core  
18 Choice loss amount is, as I said, 294,832.68. And then if you  
19 add the 67,000 in losses to Shane Gaddes, that gets you to the  
20 10,110,577.09.

21 THE COURT: So it does not include the 1.3 million or  
22 the 1.5 million?

23 MR. DEFILIPPIS: Right, because those were intended.

24 THE COURT: I think you said those were intended loss.

25 MR. DEFILIPPIS: Yes.

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1 THE COURT: Right. Okay. And then the items?

2 MR. DEFILIPPIS: The items are all jewelry that was  
3 purchased from -- with Prime Health or Core Choice funds from  
4 the American Express accounts, from the credit cards maintained  
5 by Mr. Rawlins and his companies.

6 THE COURT: So the value of those --

7 MR. DEFILIPPIS: Your Honor, we are just seeking  
8 forfeiture of the property. We haven't included those in the  
9 money judgment separately.

10 THE COURT: You're seeking the property?

11 MR. DEFILIPPIS: Yes.

12 THE COURT: But the value of those is not otherwise  
13 incorporated into the 10 million?

14 MR. DEFILIPPIS: Right.

15 MR. BRILL: Well, I guess I'll start with that first.  
16 I mean, implicit in that is whether or not that property still  
17 exists. But also, I'm not -- I have no -- again, I just  
18 received this today. So the list of properties is somewhat  
19 brand new that I've just preliminarily talked to Mr. Rawlins  
20 about. But preliminarily, there's reason to believe that none  
21 of those -- none of the purchases for that property was made by  
22 Mr. Rawlins.

23 So I don't know where that leaves us with respect to  
24 the forfeiture order that takes that into consideration, if  
25 that requires some type of hearing before the Court signs the

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1 order on that. I don't know, but I'm not in a position to  
2 consent to the order.

3 THE COURT: Well, let's just talk procedure. Does the  
4 indictment -- does the forfeiture allegation in the indictment,  
5 what does it include?

6 MR. DEFILIPPIS: Your Honor, I think it's a generic --  
7 it doesn't include a specific amount or property. It's just a  
8 generic forfeiture allegation.

9 THE COURT: Is there any reason -- given that the  
10 proposed order was provided today, is there any reason not to  
11 allow Mr. Brill an opportunity to brief arguments in  
12 opposition?

13 MR. DEFILIPPIS: I don't think so, your Honor,  
14 although my understanding is that forfeiture is part of this --  
15 whereas restitution can be done in 90 days, my understanding is  
16 forfeiture has to be pronounced at the sentencing.

17 THE COURT: I'm looking at the presentence report.  
18 Obviously there's a due process concern here. And looking at  
19 the presentence report, restitution, no specific amount's  
20 provided with respect to forfeiture. It is the generic, all  
21 property that constitutes or was derived.

22 So maybe what we have to do is adjourn -- I can  
23 pronounce the sentence up to forfeiture and restitution, and  
24 then adjourn to reconvene, if we need to, or do it on papers,  
25 if everybody agrees to that. I'm uncomfortable proceeding

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1 with -- I don't have a basis to make a determination as to the  
2 specific proposed order, and certainly would be uncomfortable  
3 doing so without an opportunity for Mr. Brill to be heard.

4 MR. DEFILIPPIS: Your Honor, I think as long as your  
5 Honor announces your intention of the sentence you'd impose and  
6 then impose it later, I guess that would be fine.

7 THE COURT: I think maybe what I'll do -- I mean, I  
8 won't issue my -- I'll issue my sentencing conclusions orally  
9 today. Sentence will be pronounced today. I won't enter my  
10 written judgment until I hear from you each as to how you want  
11 to proceed. So it could be that we're adjourning the  
12 sentencing proceeding to finalize it at another date, or it  
13 could be that I can -- everyone agrees I can resolve  
14 restitution and forfeiture on the papers, and then do so in an  
15 order followed by the judgment, okay?

16 Mr. Brill?

17 MR. BRILL: Yes. I guess maybe I could just tip my  
18 hand, which should be obvious, which is I'm not authorized -- I  
19 guess my question to the Court is, I'm not exactly sure where  
20 this ends up from my standpoint. In other words --

21 THE COURT: I'm not sure either. My only point is I'm  
22 going to give you time to put together whatever argument or  
23 conclude that there isn't an argument.

24 MR. BRILL: Right. I mean, I guess the main -- the  
25 thrust of -- putting aside the property, the thrust of the

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1 forfeiture amount, which is based on what has been explored  
2 here today, is essentially -- I mean, the Court is aware of  
3 Mr. Rawlins' position on that. So I'm not sure -- I don't see  
4 myself in a position to get to a point where I can say we agree  
5 with the forfeiture order, we consent to the number.

6 THE COURT: I understand.

7 MR. BRILL: So I think at some point it's going to be  
8 the Court's prerogative to come to the conclusion it wants to  
9 come to.

10 THE COURT: I understand that. It's only whether you  
11 have any additional arguments. And I think it's really not  
12 even the dollar amount that's potentially an issue; it's  
13 anything with respect to the specific properties. Okay?

14 MR. BRILL: Okay.

15 THE COURT: As I said --

16 MR. BRILL: I think that can be done on papers. I  
17 don't want to belabor it in a hearing. I don't think I need to  
18 do that for anybody's sake. So maybe we could try to do that  
19 out of court.

20 THE COURT: Okay. Thank you.

21 As I've stated, the guideline range applicable to this  
22 case is 135 to 168 months' imprisonment. Under the Supreme  
23 Court's decision in *Booker* and its progeny, the guideline range  
24 is only one factor that the Court must consider in deciding the  
25 appropriate sentence.

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1 I am also required to consider the other factors set  
2 forth in 18, U.S.C., Section 3553(a). And these include the  
3 nature and circumstances of the offense and the history and  
4 characteristics of the defendant; the need for the sentence  
5 imposed to reflect the seriousness of the offense, to promote  
6 respect for the law and to provide just punishment for the  
7 offense; to afford adequate deterrence to criminal conduct; to  
8 protect the public from further crimes of the defendant; to  
9 provide the defendant with needed education or vocational  
10 training, medical care or other treatment. I am taking into  
11 account the kinds of sentences available, as I've said, the  
12 guideline range, any pertinent policy statement, the need to  
13 avoid unwarranted sentence disparities and the need to provide  
14 restitution to any victims of the offense.

15 I am required to impose a sentence sufficient but no  
16 greater than necessary to comply with the purposes I've just  
17 described. I have given substantial thought and attention to  
18 the appropriate sentence in this case, in light of the 3553(a)  
19 factors and the appropriate purposes of sentencing as reflected  
20 in that statute.

21 Mr. Rawlins stands convicted by a jury of his peers of  
22 a serious and egregious crime. Through sophisticated means,  
23 unrelenting lies and intricate deception, Mr. Rawlins gained  
24 the trust of friends and business associates and then abused  
25 that trust through the stealing of millions of dollars. He

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1 preyed on numerous victims, wreaking havoc on the finances of  
2 multiple entities. And he did so, as far as I can tell, out of  
3 pure and simple greed, and in order to maintain a lavish  
4 lifestyle well beyond his means.

5 Real people were affected; the entities, as we've  
6 heard, employees of those entities, real victims. His  
7 ill-gotten gains were not to fund necessities, but a  
8 multimillion-dollar home, fancy cars, clothing and jewelry and  
9 extravagant events. Nor was this some kind of momentary lapse  
10 in judgment. It went on for years.

11 A significant sentence is necessary, therefore, to  
12 reflect the seriousness of the offense, provide just punishment  
13 for the offense, deter Mr. Rawlins and others from engaging in  
14 this kind of corrupt, damaging and illegal behavior. It's also  
15 necessary to protect the public from further crimes of the  
16 defendant, as I am concerned about what appears to be  
17 Mr. Rawlins' unceasing, the government suggests, pathological  
18 ability to continue to lie and deceive as to his conduct.

19 I'm not sure, to be honest, Mr. Rawlins, that you  
20 fully know where the truth ends and the lies begin. Perhaps  
21 you've come to believe some of your own lies. But I know a con  
22 when I see it, and I think so do you.

23 Of course, I must and I do take into account the  
24 history and characteristics of this defendant. Mr. Rawlins is  
25 60 years old. This is his first conviction. He's obviously

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1 not a violent person. I think, if anything affects my  
2 sentence, including my bottom-line sentencing conclusion here,  
3 it is those factors.

4 I also take into account his family. I did read with  
5 great care the letters from his family and friends. I have no  
6 doubt that he's a devoted family man and that he is the center  
7 of support for his wife and children and aging parents. I  
8 don't disagree with the government, in some ways this makes  
9 what occurred harder to understand. And it is Mr. Rawlins'  
10 actions, make no mistake about it, and decisions that puts his  
11 family at continuing and serious risk. But I do take that into  
12 account.

13 I do consider Mr. Brill's advocacy as to the inclusion  
14 of the loss amount as the driving factor in the ultimate  
15 guideline sentence. I don't think it's excessive here. I  
16 don't think that it overstates, particularly given the range,  
17 the number of victims, the impact of the financial harm. But  
18 at base, it's my job to exercise individual judgment and decide  
19 what an appropriate sentence is to meet the purposes of  
20 punishment that I've described, but also taking into account  
21 the history and characteristics of this defendant. And I am  
22 cautious not to impose a sentence greater than necessary to  
23 achieve those purposes.

24 With all of that stated, I'll now state the specific  
25 sentence I intend to impose. Mr. Rawlins, will you please

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1 rise.

2 It is the judgment of this Court that you will  
3 voluntarily surrender to the Bureau of Prisons for a sentence  
4 of 108 months -- and that's nine years -- to be followed by a  
5 period of three years of supervised release.

6 You may be seated.

7 During your term of supervised release, the standard  
8 conditions of supervised release shall apply. In addition,  
9 you'll be subject to the following mandatory conditions: You  
10 shall not commit another federal, state or local crime. You  
11 shall not illegally possess a controlled substance. You shall  
12 not possess a firearm or destructive device. I will suspend  
13 the mandatory drug testing condition because I conclude you  
14 pose a low risk of future substance abuse. You shall cooperate  
15 in the collection of DNA, as directed by the probation officer.

16 In addition, the following special conditions apply:  
17 You shall not incur new credit charges or open additional lines  
18 of credit without the approval of the probation officer unless  
19 you are in compliance with the installment payment schedule.  
20 You shall provide the probation officer with access to any  
21 requested financial information. You will report to the  
22 nearest probation office within 72 hours of release from  
23 custody. I do recommend you be supervised in your district of  
24 residence.

25 I am going to waive the fine because I don't believe

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1 you have the ability to pay the fine, and because I believe it  
2 would interfere with your restitution payments, which I will  
3 impose. I am imposing a mandatory special assessment of \$100,  
4 which shall be due immediately.

5 With respect to forfeiture, I do find that the  
6 defendant is to forfeit to the United States an amount which  
7 represents the proceeds obtained directly or indirectly as a  
8 result of the criminal activity, based on my conclusions as to  
9 the loss amount based on the record evidence. I do believe I  
10 will be imposing a forfeiture order of 10,110,577.09. And I  
11 will wait to hear if there's any further arguments to be made  
12 in contention with either that amount or the properties that  
13 are listed in the government's proposed forfeiture order,  
14 specific properties. I want to give counsel an opportunity to  
15 see if there are any further arguments to be made with respect  
16 to those. We'll talk about when a written submission will be  
17 due.

18 I will also be imposing restitution. I will wait  
19 here, too, for the government's briefing with respect to  
20 restitution. I want to take into account -- well, is it the  
21 government's position that I should impose restitution  
22 consistent with what was outlined in the presentence report or  
23 that I should go beyond that and consider what is argued for in  
24 the victim statements?

25 MR. DEFILIPPIS: Your Honor, I think it will be -- and

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1 I know that the companies have been doing analysis up until  
2 very recently. So even the victim letters, some of which were  
3 first prepared months ago, I think the analysis has kind of  
4 gotten ahead of those letters. So I expect it will be perhaps  
5 higher than in those letters.

6 If your Honor -- I guess our assumption was that we  
7 would need to have a brief hearing to allow the person who  
8 prepared the spreadsheets to testify about those. If there's a  
9 way to do that on the papers, we would certainly be open to  
10 that. Given that your Honor found the 2 million by a  
11 preponderance, that the 2 million number for '09 and '10  
12 applied for Prime Health, I think the difference between the  
13 victims' claims and the number based on your Honor's findings  
14 for Prime Health may be quite small. So this may come down to  
15 basically just a Core Choice restitution issue.

16 So I guess I would say if we can resolve this on the  
17 papers, it would be great. If not, I expect it wouldn't be a  
18 particularly long hearing.

19 THE COURT: All right. So I'll wait to hear -- we'll  
20 set a schedule for briefing on forfeiture and restitution,  
21 which will include what procedure everybody proposes we  
22 continue by.

23 I will state here that I will be ordering the  
24 defendant to make restitution, which will be payable to the  
25 Clerk of the US District Court for disbursement to the victims,

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1 Prime Health Services and Core Choice. The amount will be at  
2 least \$8,044,577.09. I'm going to waive the interest  
3 requirement for restitution as I have the discretion to do, so  
4 there will be no interest. I believe -- unless anybody wants  
5 to argue for something different. And when I issue my ultimate  
6 restitution order, I'll hear from the parties. Otherwise, it  
7 will be consistent with what has been proposed. And the  
8 parties were on advanced notice of it in the PSR.

9 I indicated I will waive the fine. I stated as much,  
10 but I just want to make sure that the government doesn't take a  
11 contrary position as to voluntary surrender.

12 MR. DEFILIPPIS: No, your Honor. Whatever the Court  
13 ordered.

14 THE COURT: Consistent with the probation report, I do  
15 deem voluntary surrender appropriate.

16 Mr. Brill, standard would be to pick a date  
17 approximately six weeks from now. I'm willing to extend that  
18 for the purposes of resolution of restitution and forfeiture,  
19 but I'll hear from you.

20 MR. BRILL: So I think we would ask for an extension  
21 of that. I think, given some family matters that Mr. Rawlins  
22 needs to secure before he surrenders, and given the time we  
23 need to deal with the restitution and forfeiture, perhaps a 60-  
24 to 90-day date would be respectfully requested.

25 THE COURT: Mr. DeFilippis?

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1 MR. DEFILIPPIS: Your Honor, whatever the Court -- we  
2 have no position. Whatever the Court decides.

3 THE COURT: I will ask my deputy to propose a date 60  
4 days out.

5 MR. BRILL: May I just have a moment with  
6 Mr. DeFilippis. (Pause)

7 Your Honor, if you don't mind, my question -- and  
8 maybe this is an obvious answer, but my only question was one  
9 of just practicality, which is the idea of forfeiture and  
10 restitution seems to be travelling on two separate tracks. So  
11 in a sense, the ultimate liability is double what has been  
12 lost.

13 THE COURT: I mean, it is both allowable in the law  
14 and fairly standard that the restitution and forfeiture are --  
15 usually it's the same amount twice. They serve different  
16 purposes in the law.

17 MR. BRILL: Understood. That, I understand.

18 THE COURT: That they may be different amounts here,  
19 it's a fine question, if that means anything, but ...

20 MR. BRILL: Yeah, I guess just the practicality.  
21 Perhaps this is academic, given Mr. Rawlins' financial  
22 stability at this point, but just how -- you know, the way in  
23 which -- again, we don't have to take up time here, but just  
24 the way in which it would occur, how do I advise Mr. Rawlins as  
25 to, if money is available, who to make those payments -- what

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1 that money would be attributable to. But perhaps I can look  
2 into that and get as far as I can to answer those questions.  
3 But that's just something I inquired of the government.

4 THE COURT: Thank you.

5 So as to voluntary surrender, 60 days out is Friday,  
6 September 2nd, 2016. I'll set with the requirement that  
7 Mr. Rawlins surrender by 2:00 p.m. on Friday, September 2,  
8 2016, to the facility that will be designated in advance of  
9 that. As a caution, I'll just say, if you do not receive  
10 notice of the designated facility to which you are  
11 surrendering, you must surrender to the MCC by September 2,  
12 2016 at 2:00 p.m.

13 Does either counsel know of any legal reason why this  
14 sentence shall not be imposed as stated?

15 MR. DEFILIPPIS: No, your Honor.

16 MR. BRILL: No, your Honor.

17 THE COURT: Sentence as stated is imposed. I do find  
18 the sentence is sufficient but not greater than necessary to  
19 satisfy the sentencing purposes I described earlier.

20 Let me state that I would have reached the same  
21 sentencing conclusion of a sentence of 108 months even if I had  
22 ultimately agreed with Mr. Brill's arguments regarding the  
23 sentencing calculation. I do believe fully, in light of the  
24 3553(a) factors, that this is the appropriate sentence, even if  
25 I had not made the -- even if I had not overruled the defense

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1 objections made to the calculation.

2 Mr. Rawlins, when you are released and on supervised  
3 release, you will have the guidance and support of the  
4 probation department as you establish your day-to-day life.  
5 During your period of supervised release, I do urge you to take  
6 advantage of these resources as the folks in probation are  
7 committed to helping you succeed.

8 That said, I must caution you to comply strictly with  
9 all the conditions of your supervised release. If you're  
10 brought back before me for a violation of those conditions, I  
11 may sentence you to another term of imprisonment. And I hope  
12 and expect that you won't put me to that decision.

13 Mr. Brill, are there any requests regarding  
14 designation?

15 MR. BRILL: May I just have one moment.

16 So, your Honor, at this point we have no specific  
17 recommendations for proximity of facility, in that I'm not  
18 entirely sure if there are any appropriate facilities that  
19 match Mr. Rawlins' designation as a nonviolent offender in or  
20 around Tennessee. So we will --

21 THE COURT: Would you like to include that in what  
22 we'll set as a submission date? If you want -- I'm happy to  
23 recommend that he be considered, given the nonviolent nature of  
24 the conviction, and, therefore, I presume that that will  
25 certainly be taken into account in BOP, in making its

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1 designation, but that it do so with placement as close to the  
2 Tennessee area as possible?

3 MR. BRILL: That makes sense. I just didn't want to  
4 limit it unnecessarily. But with that caveat, then that would  
5 be our recommendation.

6 THE COURT: If you determine a specific facility that  
7 you'd like to recommend, I'd be happy to hear it.

8 MR. BRILL: I think we can do that within the time  
9 frame before he surrenders.

10 THE COURT: Thank you.

11 No underlying indictments, correct?

12 MR. DEFILIPPIS: No, your Honor.

13 THE COURT: Mr. Rawlins, I want to inform you of your  
14 appellate rights. You do have a right to appeal your  
15 conviction and your sentence. If you're unable to pay the cost  
16 of an appeal, you may apply for leave to appeal informa  
17 pauperis. The notice of appeal must be filed within 14 days of  
18 judgment of conviction.

19 I have indicated that Mr. Rawlins will surrender for  
20 service at the institution to be designated by the Bureau of  
21 Prisons before 2:00 p.m. on September 2, 2016, or as notified  
22 by probation or pretrial services, or in the absence of any  
23 notification to the MCC.

24 Let's set a schedule for hearing from you on  
25 restitution forfeiture. I would say a week to hear from you.

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1 I mean, I value a joint submission. And I think really, the  
2 questions are -- what I'm hoping a joint submission at least is  
3 on are what procedures to follow; that is to say, if this is  
4 going to be resolved by paper or if we need a further hearing.  
5 And then, assuming there's agreement on that, you can put in  
6 your individual arguments as to appropriate amounts or any  
7 other aspect of the proposed order or amount.

8 MR. DEFILIPPIS: So is your Honor's order that those  
9 arguments would be included in this submission or in a later  
10 submission?

11 THE COURT: I think we need to get it resolved so the  
12 judgment can issue, the written judgment can issue. Is a week  
13 sufficient? You tell me.

14 MR. BRILL: It's only that it would conflict with  
15 other things, but --

16 THE COURT: I want to give you the time you need,  
17 Mr. Brill.

18 MR. BRILL: Two weeks?

19 THE COURT: Okay. Why don't you see if in a week you  
20 can agree on the procedure. And then if we need a hearing,  
21 then we can set a hearing date at that point. If you agree it  
22 can be done on the papers, then a week after that, I'll get  
23 your separate submissions.

24 MR. BRILL: That is fine.

25 Just a question about the judgment of conviction that

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1 your Honor mentioned with respect to notice of appeal. Am I to  
2 understand that that won't be forthcoming until we're resolved  
3 with this issue, or it will --

4 THE COURT: I haven't looked at this in a while, but I  
5 believe it starts from the issuance date of the written  
6 judgment.

7 MR. BRILL: That, I understand. I'm saying, am I to  
8 understand that that written judgment --

9 THE COURT: So I'm holding on that, unless someone  
10 proposes something different. I won't issue -- the whole  
11 judgment will include -- because we have to resolve forfeiture  
12 before I can issue the judgment. Restitution could wait, but I  
13 won't issue the judgment until this is resolved, until at least  
14 I hear from you in a week.

15 MR. BRILL: That was my question. So that the  
16 judgment will be held until we resolve the issue of forfeiture.

17 THE COURT: Yes.

18 MR. BRILL: And potentially restitution.

19 THE COURT: Mr. DeFilippis, do you agree with that?

20 MR. DEFILIPPIS: Yes, I think that's right, your  
21 Honor.

22 MR. BRILL: Thank you.

23 THE COURT: I want to make sure everyone is cautious  
24 on that point. So my intention is not to issue the written  
25 judgment on any of the sentence pronounced today until at least

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1 a week from now, but more likely two weeks from now.

2 MR. BRILL: Yes. And so to follow through with that  
3 cautious tone, from my standpoint -- and I think this is solid  
4 legal ground -- that notices of appeal are triggered once the  
5 judgment is issued by a sentencing court. And so that is what  
6 I will do, in that I will await that particular sentencing  
7 judgment and then comply with the requirements of filing the  
8 notice of appeal.

9 THE COURT: Mr. DeFilippis?

10 MR. DEFILIPPIS: That's the government's  
11 understanding, your Honor. Essentially we understand your  
12 Honor to have announced your intention of what sentence to  
13 impose, but that sentence will issue when the judgment does.

14 THE COURT: Correct. That is my view, too. And if  
15 anyone recognizes any issue in that or spots any issue in that  
16 that they have concerns about, you can raise that with me. But  
17 I have indicated what sentence I will impose, which will be  
18 incorporated into my written judgment once we resolve  
19 restitution and forfeiture, okay?

20 And presumably the 14 days will run from the date of  
21 that.

22 MR. BRILL: That's my understanding.

23 THE COURT: Okay. Thank you.

24 Anything else, counsel?

25 MR. DEFILIPPIS: No, your Honor. Thank you.

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1 MR. BRILL: Thank you.

2 THE COURT: I don't know if I'll see you again, but if  
3 not, again, I thank counsel.

4 And, Mr. Rawlins, best of luck to you, sir.

5 We're adjourned.

6 (Adjourned)

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